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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 5.

HARRY H. WOODRING, Secretary of War, and H. A. A. SMITH, General Purchasing Officer and Chief of Washington Office, Panama Canal, *Petitioners,*

v.

JUSTUS S. WARDELL, Receiver, District National Bank of Washington, D. C., *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF FOR THE RESPONDENT.

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SUBJECT INDEX.

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement of Facts	3
Summary of Argument	7
Argument	8
I. The pledges were invalid	8
A. Status of Public and Private Deposits in National Banks, Both Unsecured and Secured	8
1. There is no Congressional policy in favor of giving preference to United States Government deposits in banks, even though Congress had provided that claims of the United States against all insolvents shall have priority over all other claims, this Court has held consistently that such rule does not apply to claims of the United States against insolvent national banks	9
2. There is no general power given by the National Bank Act to national banks to pledge assets to secure deposits and the general policy of the National Bank Act is to place all deposits, public and private, on an equality and entitled to ratable dividends when insolvency intervenes	14
3. The general power given to national banks to secure public deposits relates specifically to public money of the United States and entrusts only to the Secretary of the Treasury the power to designate the depositaries and the making of deposits, and such desig-	

Page

nations are coupled with various important duties to be performed by the Secretary and the banks 20

4. Whenever Congress has desired to authorize the securing of deposits of funds in public custody which might not be, strictly speaking, United States public money, it has done so by a specific act 24

B. There is no statutory authority for these pledges 27

1. The pledges were not authorized by Sec. 90, Title 12, U. S. C. (R. S., Sec. 5153) 27

(1) At the time the deposits here in question were made and ever since, it has been recognized that they did not constitute public money of the United States and did not fall under any Statute authorizing the securing of deposits in national banks 27

(2) The holding of Judge Warwick and Colonel Goethals and the Secretary of War was based upon decisions of this Court 30

(3) Petitioners admit in their Answer that the funds involved were not made under Sec. 90, Title 12, U. S. C. 32

2. There is no specific Act of Congress authorizing the pledge of securities by national banks to secure the deposits of Panama Canal Zone Money Order Funds 33

II. The trial court had jurisdiction 54

A. The attempted pledge of the bank's assets to secure Canal Zone deposits in the absence of express statutory authority was void, and no title to said assets passed thereby to the intended pledgee 54

Page

B. An unauthorized pledge of a national bank's assets being void, the receiver is entitled to recover the pledged property or the proceeds thereof 57

C. The fund sought to be recovered has not been covered into the Treasury of the United States, is not part of the revenue of the United States, and is not public money of the United States.. 58

D. The doctrine of sovereign immunity does not apply 63

E. The doctrine of sovereign immunity 69

F. The United States is not a necessary party to the suit because petitioners are unable to show that the United States has any legal interest in the property which is the subject matter of the suit. Since petitioners have control of Respondent's funds in the Hamilton National Bank and since they have no legal interest in such property, they have a duty to return that property, and the Court may enforce such duty by its decree 79

I. The Allowance of Interest in the Judgment Below 84

V. Conclusion 86

CASES CITED.

. Schrader's Sons, Inc. v. Wein Sales Corp., (C. C. A. 2) 9 F. (2d) 306 84

llen v. B. & O. Ry. Co., 114 U. S. 311 60

rizona v. California, 298 U. S. 558 84

aldwin v. Chase National Bank of City of New York, 16 F. Supp. 918 78

altimore and Ohio Ry. Co. v. Smith (C. C. A. 3), 56 F. (2) 799 ..... 55, 56

erger v. Chase National Bank (C. C. A. 2) decided July 24, 1939, petition for certiorari now pending 52

ranch v. U. S., 100 U. S. 673 23

ammeyer v. Newton, 94 U. S. 225 83

Page

Central Transportation Co. v. Pullman Palace Car, 139 U. S. 24 54
Chapman v. County of Douglas, 107 U. S. 348 ..... 78, 82
Cincinnati v. White, 6 Pet. 431 66
City of Chicago v. Joseph (C. C. A. 7), 95 F. (2) 444, cert. den. 304 U. S. 578 ..... 51, 55, 56, 85
City of Fort Worth v. McCamey (C. C. A. 5), 93 F. (2d) 964, cert. den. 304 U. S. 571 ..... 51, 55
City of Marion v. Sneeden, 291 U. S. 262 .. 14, 16, 24, 50, 57
Cook County National Bank v. U. S., 107 U. S. 445 (1882) 10, 12
Cummings v. Hardee, 102 F. (2d) 622 ..... 60, 61
Cunningham v. Macon and Brunswick Railroad Co., et al., 109 U. S. 446 73
Downes v. Bidwell, 182 U. S. 244 31
Downey v. City of Yonkers (C. C. A. 2nd, Aug. 3, 1939) 55
Ex parte Ayers, 123 U. S. 443 60
Fleming v. Page, 9 How. 603 31
Governor of Georgia v. Sundry African Slaves, Madrazo, claimant, 1 Pet. 110 74
Granzow v. The Village of Lyons, (C. C. A. 7) 89 F. (2d) 83 51
Helvering v. Helmholz (U. S. C. A., D. C.), 75 F. (2d) 245 84
Hood v. Hardesty, (C. C. A. 4) 94 F. (2d) 26, cert. denied 303 U. S. 661 ..... 51, 54, 57, 85
Ickes v. Fox, 300 U. S. 82 60
Illinois Central v. Rawlings, (C. C. A. 5) 66 F. (2d) 146, cert. denied 291 U. S. 668 ..... 55, 56
Keifer & Keifer v. Reconstruction Finance Corp., 306 U. S. 381 69
Langford v. Platte Iron Works, 235 U. S. 461 83
LaParr v. City of Rockford, (C. C. A. 7) 100 F. (2d) 564, cert. denied May 1, 1939 ..... 54, 57, 58
Leonard v. Gage, (C. C. A. 4) 94 F. (2d) 19, cert. denied 303 U. S. 653 ..... 51, 55, 57, 58
Lewis v. Fidelity & Deposit Co., 292 U. S. 559 ..... 14, 20
Louisiana v. Jumel, 107 U. S. 711 74
McConaughey v. Morrow, 263 U. S. 39 36
Mason v. Tax Commission, 302 U. S. 186 42
Mattingly v. District of Columbia, 97 U. S. 687 42

Page

Miles v. Caldwell, 2 Wall. 35 66
Minnesota v. U. S., 305 U. S. 382 84
Murray v. Wilson Distilling Company, 164 Fed. 1 83
Nagonab v. Hitchcock, 202 U. S. 473 84
New Mexico v. Lane, 243 U. S. 52 84
O'Connor v. Rhodes, 79 F. (2d) 146 (aff. 297 U. S. 383) 22, 51, 58
Oregon v. Hitchcock, 202 U. S. 473 84
Osborn v. Bank of the United States, 9 Wheat. 738 ..... 60, 63, 86
Otis v. Otis, 167 Mass. 245, 45 N. E. 737 81
Pennoyer v. McConnaughy, 140 U. S. 1 ..... 70, 79
Philadelphia Co. v. Stimson, 223 U. S. 605 60
Poindexter v. Greenhow, 114 U. S. 270 ..... 60, 74, 80
Queenan v. Mays, (C. C. A. 10) 90 F. (2d) 525, cert. denied 302 U. S. 724 55
Redfield Independent School District v. Schnetzer, (C. C. A. 8) 94 F. (2d) 258 ..... 54, 58, 85
Rorick v. Devon Syndicate, Ltd., 307 U. S. 299 84
Scott v. Donald, 165 U. S. 58 ..... 60, 62
Smith v. McCann, 24 How. 398 66
Smith v. Reeves, 178 U. S. 436 76
Stanley v. Schwalby, 162 U. S. 258 67
State of Louisiana v. Garfield, 211 U. S. 70 84
Swayne & Hoyt, Ltd. v. U. S., 300 U. S. 297 42
Texas & Pacific Railway Company v. Pottorff, 291 U. S. 245 ..... 14, 24, 50, 54, 55
Tiaco v. Forbes, 228 U. S. 549 42
Tindal v. Wesley, 167 U. S. 204 ..... 60, 77
U. S. v. Lee, 106 U. S. 196 60
U. S. v. Midwest Oil Co., 236 U. S. 459 52
U. S. v. Peters, 5 Cranch (9) 115 60
U. S. ex rel. Mastoras v. McCandless, (C. C. A. 3) 61 F. (2d) 366 84

STATUTES CITED.

U. S. C. Title 6, Sec. 15 25
U. S. C. Title 11, Sec. 101 25
U. S. C. Title 12, Sec. 24 (R. S. Sec. 5136) 8
U. S. C. Title 12, Sec. 90 (R. S. Sec. 5153) ..7, 9, 12, 15, 21, 23, 26, 27, 30, 32, 49

Page

U. S. C. Title 12, Sec. 91 (R. S. Sec. 5242) 9, 50
U. S. C. Title 12, Sec. 192 (R. S. Sec. 5234) 9, 25
U. S. C. Title 12, Sec. 194 (R. S. Sec. 5236) 9, 11, 50
U. S. C. Title 12, Sec. 332 (Act of Dec. 23, 1913, c. 6, Sec. 9, 38 Stat. 259, as amended) 19
U. S. C. Title 18, Sec. 182 (Act of Mar. 4, 1909, c. 321, Sec. 96, 35 Stat. 1106) 24
U. S. C. Title 25, Sec. 156 26
U. S. C. Title 31, Sec. 191 (R. S. Sec. 3466) 8
U. S. C. Title 39, Sec. 751, 759 (Act of June 25, 1910, c. 386, Sec. 1 et seq., 36 Stat. 814) 26, 45
U. S. C. Title 48, Sec. 780 (Act of Apr. 12, 1900, c. 191, Sec. 22, 31 Stat. 82, as amended) 26
U. S. C. Title 48, Sec. 734 .....27, 49
U. S. C. Title 48, Sec. 1323a (Act of Feb. 16, 1933, 47 Stat. 812) 44
U. S. C. Title 48, Sec. 1324 (Act of Sept. 21, 1922, c. 370, 42 Stat. 1008) 43
Sec. 240 (a) of the Judicial Code as amended by the Act of Feb. 13, 1925 2
Act of June 28, 1902, c. 1302, 32 Stat. 481 35
Act of Apr. 28, 1904, c. 1758, 33 Stat. 429 35
Act of Aug. 24, 1912, Sec. 2, 37 Stat. 560.....36, 40
Act of Aug. 21, 1916, Secs. 6 and 7, c. 371, 39 Stat. 528 40
Act of June 22, 1938, c. 575, Sec. 1, 52 Stat. 872 25
Panama Canal Act of 1912 48
The Panama Canal Act of Fed. 16, 1933 48
Canal Zone Code of June 19, 1934 34
Act No. 8 of Isthmian Canal Com., passed Sept. 2, 1904 47
Autonomy Act of 1916 53
Sec. 625 of the Philippine Administrative Code of 1917 53
Act of May 17, 1928, 45 Stat. 596 34

MISCELLANEOUS CITATIONS.

Executive Order of Sept. 8, 1911 46
Executive Order of Jan. 27, 1914 .....37, 44
Executive Order of Sept. 5, 1914 .....41, 46
Rule 86, Federal Rules of Civil Procedure 68
Executive Orders Relating to the Panama Canal (Mar. 8, 1904 to Dec. 31, 1921) 39

Page

rcular No. 660-2, dated Apr. 1, 1914, Governor of the Panama Canal Zone 38
partment of Justice Brief in Cummings, as Alien Property Custodian of the United States v. Hardee, #7127, in U. S. Ct. of Appls. for the D. C. 80
use Report No. 526, 72nd Congress, 1st Session 48
e Panama Canal Press, Mount Hope, C. Z., 1922.... 39
. Comp. of Treas., 11 C. D. 36 30
tter of May 9, 1904, from the President to the Secretary of War 35

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BRIEF FOR THE RESPONDENT.

OPINIONS BELOW.

The judgment in the District Court was entered without an opinion (R. 23-24). The opinion of the United States Court of Appeals for the District of Columbia (R. 27-28) is reported in 100 F. (2d) 690.

JURISDICTION.

The Jurisdiction of this Court was invoked under Sec. 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and the petition for a writ of certiorari was granted on March 13, 1939 (R. 31).

QUESTIONS PRESENTED.

On June 4, 1936, respondent's predecessor in office as Receiver of the District National Bank of Washington, D. C., an insolvent national bank, filed an amended bill of complaint against the predecessors in office of petitioners to recover certain bonds of the bank, or the proceeds thereof upon the theory that the pledging of these assets by the bank before its closing to secure deposits of money order funds derived from the Panama Canal Zone was neither authorized nor required by an Act of Congress and hence was illegal, *ultra vires* and void.

In the petition for certiorari, the following questions were presented:

(1) Is the United States an indispensable party defendant?

(2) Under the circumstances of this case, was the giving of security by the national bank invalid?

It was stated in the petition for certiorari that if certiorari were granted it was proposed to consider also the question whether, if the deposit was invalid, the bank became a trustee *ex maleficio* of the funds involved. This point, however, has been abandoned in petitioners' brief.

STATUTES INVOLVED.

The statutes involved, and other public documents referred to, are either set forth in the separately printed appendix hereto or reference herein is made to the separately printed appendix to petitioners' brief.

STATEMENT OF FACTS.

The case is before this Court upon the pleadings consisting of an amended bill of complaint (R. 1-11); orders regarding the substitution of the party plaintiff and the parties defendant (R. 11-12); and answer (R. 12-22); and a motion to strike certain defenses and for the entry of a decree *pro confesso* against the petitioners (R. 22-23); the judgment of the District Court (R. 23-24); and the judgment of the court below affirming the judgment of the District Court (R. 27-28).

In paragraph numbered 5 (b) of the amended bill of complaint (R. 2), it was stated that the defendants and each of them (petitioners here) were sued in both their individual and official capacities.

The facts may be summarized as follows:

On August 18, 1914, under a contract with the officers of the District National Bank of Washington, D. C. (R. 8-11), the Secretary of War opened two deposit accounts in the bank which was a national banking association (R. 2-3). One of those accounts was designated "Secretary of War, Canal Zone Funds, Call Account"; the other "Secretary of War, Canal Zone Funds, Checking Account" (R. 2, 3).

As security for the safekeeping and repayment of such deposits, the officers of the bank delivered to the then Purchasing Officer of the Panama Canal certain of the bank's assets consisting of certain bonds of the aggregate par value of $274,200. (R. 3.) On March 5, 1933, the bank was closed by proclamation of the President of the United States and was never thereafter reopened and was found and determined to be insolvent by the Comptroller of the Currency of the United States, who appointed a Conservator for the bank on March 14, 1933, and who appointed a Receiver on November 6, 1933, and who subsequently appointed a successor Receiver (respondent herein) (R. 2, 11). At the time of the closing of the bank, the credit balance in the "Call Account" amounted to $200,000. and

the credit balance in the "Checking Account" amounted to $14,739.80 (R. 2, 3). The deposits for which said securities were pledged were at the time of the closing of the bank almost entirely composed of moneys received by the Postal Service of the Canal Zone and consisted of deposit money order funds and money order funds (R. 14).

On September 24, 1933, the securities were sold to the Hamilton National Bank under an agreement and arrangement by the then Secretary of War and the then General Purchasing Officer of the Panama Canal with the then Conservator of the bank (R. 3-13) and from the proceeds of the sale, the then Secretary of War was paid $214,739.80 constituting the combined balance of the two accounts and an additional sum amounting to $3,535.37, representing alleged accrued interest upon said deposit balance to and including September 24, 1933, said above described sums being paid to the then Secretary of War and the then General Purchasing Officer of the Panama Canal by the setting up of the new deposit account in the Hamilton National Bank of Washington, D. C., in the name of the Secretary of War, Canal Zone Funds (R. 3).

On June 4, 1936, the then Receiver of the District National Bank of Washington sued the petitioners to recover that part of the proceeds of the pledged bonds which represented an amount in excess of the distributed dividends paid to general creditors. It was shown by the bill of complaint that all depositors and creditors of the District National Bank of Washington had received a five per cent distribution on claims on March 1, 1933 and that a further distribution of 50 per cent on the amount of the provable claims against the bank had been paid on September 24, 1933 (R. 4). It was conceded by the bill of complaint that petitioners were entitled to like credits (R. 4) as well as credits on account of any further dividends paid to general creditors.

The basis for this suit as averred in the amended bill of complaint was that the pledging of the bank's assets to se-

cure the deposits in question was without authority of law and hence that the then Secretary of War was without authority of law to receive and accept such assets so pledged as collateral security or in any capacity other than in trust for the bank, and that when the bonds were sold, following the closing of the bank, the proceeds were illegally paid under a mistake of law to the then Secretary of War, and that such proceeds were being held illegally and in trust for the benefit of the depositors, creditors and stockholders of the District National Bank of Washington, and as such were recoverable by plaintiff from petitioners, together with interest at the legal rate from September 24, 1933, the date of the illegal payment, less an allowance for dividends paid to general creditors (R. 3-4).

In paragraph numbered 9 of the bill of complaint (R. 6), it was averred that the funds claimed by respondent "are not moneys of the United States, are not part of the revenues of the United States, and are not subject to the control of the Secretary of the Treasury of the United States in his official capacity as Secretary of the Treasury with respect to moneys of the United States," and "are not moneys of the Panama Canal," and "all of said moneys claimed by plaintiff in said bill of complaint are part of the trust assets of the insolvent District National Bank of Washington, D. C., belonging to the general creditors of the bank, out of which trust assets all creditors are entitled to be paid ratably." It was also averred that said funds "have not been covered into the Treasury of the United States or the Treasury of any State, territory or other government." It was further averred "that the District National Bank of Washington, D. C., was never designated by the Secretary of the Treasury under regulations prescribed by said Secretary, to receive deposits of the Government of the Canal Zone • • • nor did the Secretary of the Treasury exact from said District National Bank of Washington, D. C., the pledges of securities which are the subject matter of this suit."

In petitioners' answer to paragraph numbered 9 of the bill of complaint (R. 20), the petitioners "admit that the funds and money referred to in paragraph numbered 7, to wit, the so-called Panama Canal funds, are not public funds and are not part of the revenues of the United States; that they are not subject to the control of the Secretary of the Treasury in his official capacity as such Secretary in respect of public moneys of the United States; but in this connection, they aver that the interest accruing on said moneys is a part of the revenues of the United States; and further that in respect of such of said moneys as were derived from the issuance of Postal Money Orders, they are funds for the payment of which the United States is responsible and obligated." Further, petitioners denied "that said moneys are not moneys of the Panama Canal, as alleged in said paragraph, and on the contrary aver that they are moneys of the said Panama Canal." Further, petitioners "admit that the District National Bank was never designated by the Secretary of the Treasury as depositary of the Government of the Canal Zone, but say that the Secretary of the Treasury did approve of the depositing in the said District National Bank of moneys of the Panama Canal." Further, petitioners "admit that the Secretary of the Treasury did not exact of the said Bank, the pledge of the securities given to insure the deposits of the Panama Canal funds but they aver that the Secretary of the Treasury was consulted by the Secretary of War in respect of the latter's proposal to require securities for said deposits and approved the same."[1]

The respondent's motion to strike certain parts of the answer and for the entry of a decree *pro confesso* was granted by the trial court and a judgment was entered against the petitioners (R. 22-24). On appeal, the United States Court of Appeals for the District of Columbia affirmed the judgment below (R. 28).

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[1] In a separate defense (R. 16) petitioners averred that the deposits "were of monies of the United States, so deposited by agents of the United States."

SUMMARY OF ARGUMENT.

I.

There is no congressional policy in favor of giving preference to United States Government deposits in banks. Even though Congress had provided that claims of the United States against all insolvents shall have priority over all other claims, this Court has held consistently that such rule does not apply to claims of the United States against insolvent national banks.

The general power given to national banks to secure public deposits relates specifically to public money of the United States and entrusts only to the Secretary of the Treasury the power to designate the depositaries and the making of deposits, and such designations are coupled with various important duties to be performed by the Secretary and the banks.

Whenever Congress has desired to authorize the securing of deposits of funds in public custody which might not be, strictly speaking, United States public money, it has done so by a specific Act.

At the time the deposits here in question were made and ever since, it has been recognized that they did not constitute public money of the United States and did not fall under any statute authorizing the securing of deposits in national banks.

Petitioners admit in their answer that the pledges were not made under Sec. 90, Title 12, U. S. C.

There is no specific Act of Congress authorizing the pledge of securities by national banks to secure deposits of Canal Zone money order funds.

There was no rule or regulation having the effect of an act of Congress authorizing the pledging of the bank's assets to secure these deposits.

The lack of statutory authority cannot be supplied either by custom or usage or by the sanction and approval of the Comptroller of the Currency or other executive officers.

II.

The pledge, being unauthorized, was void, and neither the pledgees, the Canal Zone, nor the United States acquired any right or interest in the illegally pledged bonds or the proceeds thereof, which at all times remained the property of the bank.

An unauthorized pledge of a national bank's assets being void, the receiver is entitled to recover the pledged property or the proceeds thereof.

Since the possession of petitioners results from a void act, their possession is personal, not official, and, therefore, a suit against them is not a suit against the United States.

The fund sought to be recovered has not been covered into the Treasury of the United States, is not part of the revenues of the United States and is not public money of the United States.

The doctrine of sovereign immunity does not apply because, the United States having no interest in the fund sought to be recovered, is not an indispensable party to the suit.

ARGUMENT.

I.

The Pledges Were Invalid.

A—Status of public and private deposits in national banks, both unsecured and secured.

As a preliminary to consideration of the legality of the pledge involved here, it will be helpful to examine the status of deposits both public and private in national banks, unsecured as well as secured.

The relevant statutes involved in this consideration are Sec. 191, Title 31, U. S. C. (R. S., sec. 3466, derived from Sec. 5 of the Act of March 3, 1797), Sec. 24, Title 12, U. S. C., (R. S., sec. 5136), derived from Sec. 8 of the original National Bank Act (Act of June 3, 1864) defining the cor-

porate powers of national banking associations; Sec. 90, Title 12, U. S. C. (R. S., sec. 5153), derived from Sec. 45 of the original National Bank Act of June 3, 1864, covering the securing of public money deposited in national banks by the Secretary of the Treasury; Sec. 192, Title 12, U. S. C. (R. S., sec. 5234), derived from Sec. 50 of the National Bank Act of June 3, 1864, covering among other things, the collection by receivers appointed by the Comptroller of the Currency of claims owing to insolvent national banks; and Sec. 194, Title 12, U. S. C. (R. S., sec. 5236), derived from Sec. 50 of the National Bank Act of June 3, 1864, providing for the payment by the Comptroller of the Currency of ratable dividends on all claims against insolvent national banks; and R. S. sec. 5242 (Sec. 91, Title 12, U. S. C.), prohibiting preferential transfers of assets made in contemplation of insolvency.

1. THERE IS NO CONGRESSIONAL POLICY IN FAVOR OF GIVING PREFERENCE TO UNITED STATES GOVERNMENT DEPOSITS IN BANKS. EVEN THOUGH CONGRESS HAD PROVIDED THAT CLAIMS OF THE UNITED STATES AGAINST ALL INSOLVENTS SHALL HAVE PRIORITY OVER ALL OTHER CLAIMS, THIS COURT HAS HELD CONSISTENTLY THAT SUCH RULE DOES NOT APPLY TO CLAIMS OF THE UNITED STATES AGAINST INSOLVENT NATIONAL BANKS.

With respect to the policy established by Congress on the relationship between national banks and deposits therein of government funds, the first point of importance is that although as early as March 3, 1797, Congress provided that United States Government claims against insolvent debtors generally should be given priority over all other claims, this rule does not apply to United States Government claims against insolvent national banks.

The rule with respect to the priority of government claims generally against insolvents is now embodied in Revised Statutes, Sec. 3466, which by the terms of that statute

applies "whenever any person indebted to the United States is insolvent." This statute provides:

> "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

The rule that this section and the policy embodied therein does not apply to insolvent national banks was definitely decided in *Cook County National Bank* v. *U. S.*, 107 U. S. 445 (1882) and has been followed consistently ever since. That case is of particular importance as showing in detail the opinion of this Court with respect to the policy of Congress both on secured and unsecured government deposits in insolvent national banks. Discussing the National Bank Act and its relation to deposits of public funds in that case, this Court said (at p. 448):

> "We consider that Act (the National Bank Act) as constituting by itself a complete system for the establishment and government of national banks, prescribing the manner in which they may be formed, the amount of circulating notes they may issue, the security to be furnished for the redemption of those in circulation; their obligations as depositaries of public moneys, and as such to furnish security for the deposits, * * *. Everything essential to the formation of the banks, the issue, security and redemption of their notes, the winding up of the institutions and the distribution of their effects, are fully provided for, as in a separate code by itself, neither limited nor enlarged by other statutory provisions with respect to the settlement of demands against insolvents or their estates. * * *

"In the second place, when the banks are made depositaries of public moneys and employed as financial agents of the government, it is the duty of the Secretary of the Treasury to require them to give satisfactory security, by the deposit of United States bonds or otherwise, for the safe-keeping and prompt payment of the public money deposited and for the faithful performance of their duties as financial agents. The amount of security which the Secretary may thus require has no limit but his own judgment as to its necessity. Every officer of a bank which is not an authorized depositary, and which has not therefore given the required security, who knowingly receives any public money on deposit, is liable for embezzlement. R. S., sec. 5497. The Government can thus always have security, limited in amount only by the judgment of the Secretary of the Treasury, for public moneys deposited with any national bank.

"With these provisions for security against possible loss for moneys deposited, it would seem only equitable that the Government should call for such security and, if it prove insufficient, take the position of other creditors in the distribution of the assets of the bank in case of its failure. The framers of the banking law evidently so regarded the matter."

The Court then referred to the provisions of Revised Statutes, sec. 5236 (Sec. 194, Title 12, U. S. C.), for the making of ratable dividends by the Comptroller of the Currency on all claims proved to his satisfaction or adjudicated in a court of competent jurisdiction. The Court then said (at p. 450):

"These provisions could not be carried out if the United States were entitled to priority in the payment of a demand note arising from advances made to redeem the circulating notes. The balance, after reimbursement of the advances, could not be distributed as directed, by a ratable dividend to all holders of claims, that is, to all creditors.

"These provisions must be deemed, therefore, to withdraw national banks, which have failed, from the class of insolvent persons out of whose estate demands

of the United States are to be paid in preference to the claims of other creditors."

The *Cook County National Bank* case is interesting in another aspect. Prior to closing, the bank, in addition to depositing bonds with the Secretary of the Treasury to secure the deposits in the bank of public money, had also, in accordance with law, deposited other bonds as security for the circulating notes of the bank. In addition, the Treasury Department held a considerable sum belonging to the bank collected from bills receivable and debts due to it. One of the chief points of the case was whether the United States could apply against the deposits of public money in the bank such general assets and the excess of the bonds deposited as security for the circulating notes of the bank. This Court held that it could not make such application and that the United States would have to suffer a loss as to the part of the public money deposited in the bank, which was not secured under Section 45 (now Sec. 90, Title 12, U. S. C.). Speaking of such excess securities, money and so forth, this Court said (at pp. 452, 453):

"The Bank could have claimed their return at any time upon a surrender of the notes. The surplus constituted the assets of the Bank, and part of the fund appropriated by the statute for its creditors. It was charged with this liability, and was held subject to it after the purposes of the original trust were accomplished, although remaining in the Treasury. It was then subject to a new trust. A trustee cannot set off against the funds held by him in that character his individual demand against the grantor of the trust. Courts of equity and courts of law will not allow such an application of the funds so long as they are affected by any trust. It would open the door to all sorts of chicanery and fraud. The fund must be relieved from its trust character before it can be treated in any other character.

* * *

"Here the surplus being a fund for all the creditors, was subject to be distributed to them immediately upon the re-imbursement of the advances of the United States, and the right of the creditors to it was not affected by the fact that it was at the time in the actual possession of the treasury department.

"Nor is the relation of the United States to this fund changed by the forfeiture of the bonds, which the comptroller of the currency, was authorized, upon the failure of the Bank, to declare. The forfeiture was not a confiscation of the bonds to the Government. It amounted only to an appropriation of them, against any other claim, to the specific purposes for which they had been deposited, authorizing their cancellation at market value when not above par, or their sale, so far as necessary to redeem the circulation or re-imburse the United States for moneys advanced for that purpose. When that purpose was accomplished, the Bank had the right to any surplus of their proceeds, equally as though that right had been in express terms declared."

It is true that *Cook County National Bank* v. *U. S.* was in the form of an action brought by the United States. But had the United States not thus taken the initiative to establish the legality of its holding of the bank's assets, it seems likely that an action by the bank, or its receiver, to establish the same right would have been entertained.

The clear effect of the decision of this Court in the Cook County National Bank case is that unless public funds have been secured in accordance with law, the United States government is entitled to no priority over other depositors against insolvent national banks, although with respect to all other insolvents, it does have such a priority.

2. THERE IS NO GENERAL POWER GIVEN BY THE NATIONAL BANK ACT TO NATIONAL BANKS TO PLEDGE ASSETS TO SECURE DEPOSITS AND THE GENERAL POLICY OF THE NATIONAL BANK ACT IS TO PLACE ALL DEPOSITS, PUBLIC AND PRIVATE, ON AN EQUALITY AND ENTITLED TO RATABLE DIVIDENDS WHEN INSOLVENCY INTERVENES.

The second point of importance in this connection is that the securing of deposits, either public or private, is not a necessary incident of the business of national banks and that unless the securing of a deposit by a national bank has been specifically authorized by an Act of Congress, such pledge of the assets of the bank is illegal, *ultra vires*, and void *ab initio*. Recalling that as a result of the *Cook County National Bank* case, *supra*, public deposits and private deposits stand on an absolute equality with respect to priority against insolvent national banks, the necessity for specific statutory authority for a pledge to secure any sort of deposit was decided by this Court in *Texas & Pacific Railway Company* v. *Pottorff*, 291 U. S. 245, 253-260; *City of Marion, Illinois* v. *Sneeden*, 291 U. S. 262, 268; *Lewis* v. *Fidelity and Deposit Co.*, 292 U. S. 559, 564.

While the *Pottorff* case involved the attempt to secure the deposit of a private depositor (The Texas & Pacific Railway Company) the decision and opinion of this Court disposed of several contentions made by petitioner in this case and brought up to date from the time of the *Cook County National Bank* case, *supra*, the position of this Court towards efforts to secure deposits in national banks, especially the position taken by petitioner in this case that the power to give security is included among the incidental powers of national banks. Discussing the policy of Congress in this respect in enacting the National Bank Act, this Court in the *Pottorff* case said (at p. 255):

"To permit the pledge would be inconsistent with many provisions of the National Bank Act which are designed to insure, in case of disaster, uniformity in

the treatment of depositors and a ratable distribution of assets. Compare *Davis* v. *Elmira Sav. Bank*, 161 U. S. 275, 290. This policy of equal treatment was held to preclude, in case of a national bank, even the preference under Section 3466 of the Revised Statutes, U. S. C. title 31, section 191, which otherwise is accorded to the United States when its debtor becomes insolvent. *Cook County Nat. Bank* v. *United States*, 107 U. S. 445. The effect of a pledge is to withdraw for the benefit of one depositor part of the fund to which all look for protection. Thereby the legitimate expectations of a great body of the depositors are defeated and confidence in the fairness of the national banking laws and administration is impaired. It is no answer to say that the other depositors are benefited by the increased resources which the pledge brings to the bank, or at least are not harmed, since the new funds take the place of the securities pledged and are available to meet liabilities. The immediate safety of unsecured creditors depends on the bank remaining open and solvent; the pledge reduces the fund of quick assets available to meet unusual demands without any assurance that the deposit will be used to replenish this fund."

Referring specifically to the contention identical with the contention made by petitioners in the instant case that the provision in the National Bank Act (Sec. 90, Title 12, U. S. C.) authorizing the Secretary of the Treasury to demand security for deposits by him of public money, assumed the giving of security to be an incidental power of national banks generally, this Court said in the *Pottorff* case (at p. 257, 258):

"The Railway insists that Congress in providing that the Secretary of the Treasury might deposit public money in national banks upon receiving satisfactory security by 'the deposit of United States bonds or otherwise,' Act of June 3, 1864, assumed a general power in national banks to pledge their assets to secure deposits; and that the assumption indicates that it intended this power to be among the 'incidental'

> powers granted by section 8. But without such assumption, the duty of the Secretary to demand a pledge authorizes a national bank to make it. We may not import into section 8 a meaning not derivable from the words of that section and inconsistent with other provisions of the Act."

The Court having thus in the *Pottorff* case decided that all pledges by national banks of their assets to secure all deposits of private depositors were invalid, the next step was the decision of the Court on the same day that national banks had no power to pledge their assets to secure any deposits, even public deposits, which had not been specifically authorized by Congress.

City of Marion v. *Sneeden, supra,* involved the effort to secure the deposit of a municipality in Illinois. In deciding that the pledge involved was invalid, this Court said (at page 268):

> "For the reasons stated in *Texas & P. R. Co.* v. *Pottorff,* No. 128, decided this day, we are of opinion that the Act of 1864 did not confer the power to pledge assets to secure any public deposits except those made under section 45 by the Secretary of the Treasury of the United States. The power conferred by each later act, except that of 1930, was limited to securing specific Federal funds."

In view of the contention here that the power to exact the pledges in question is to be implied, the reasoning of this Court in the Sneeden case is important. There, admittedly, Congress by the 1930 amendment to the National Bank Act had authorized national banks to give security for the payment of deposits of states or political subdivisions thereof "of the same kind as is authorized by the law of the State in which such association is located in the case of other banking institutions in the State." Admittedly also the laws of Illinois provided for the banks in that State to secure the deposits of the State itself, and the question was whether Illinois also permitted banks

there to secure the deposits of political subdivisions of the States. Several statutes and decisions of the Illinois courts thereon were relied upon as giving such power impliedly, but this Court held that in order to comply with the federal statute, there must be an Illinois statute conferring the power in express terms. This Court said (at p. 269):

> "No Illinois statute confers in express terms upon banks organized under its laws either the general power to pledge assets to secure a deposit; or the general power to pledge assets to secure public deposits. A statute confers in terms the power to pledge assets to secure deposits of the States but there is none which so confers the power to pledge assets to secure public deposits of a political subdivision of the State."

In the absence of such a specific statute, this Court held the pledge there involved to be invalid.

Furthermore, in the Sneeden case, there was involved a statute of the State of Illinois (291 U. S. 266, 267) which required the treasurer of a city to deposit his city funds in banks only after the depositary bank had given a bond with sureties, conditioned that the bank would safely keep and account for and pay over the public deposit. Instead of the depositary bank executing its bonds with sureties, it deposited as collateral the securities involved in the case. In other words, the provisions of the Illinois statute in this respect were practically identical with the then existing provisions of Sec. 101, Title 11, U. S. C., with respect to securing deposits of United States bankruptcy funds.[2] It was urged in the Sneeden case that such Illinois statute was at least a substantial compliance with the June 25, 1930 amendment to Sec. 90, Title 12. This Court rejected this contention and held that there must be a specific statute authorizing the pledge.

Petitioners seek to escape the effect of the Sneeden case by stating that "the validity of the pledge follows from the

[2] See footnote 4.

general governmental character of the deposit." The point is not stressed in the brief for the petitioners in the District National Bank case, but is dwelt upon in the brief for the petitioners in the Commercial National Bank case. There it was urged that only the private aspect of national banks was considered in the Pottorff and Sneeden cases, and that a different rule should apply where a national bank, as an instrumentality of the Federal government, secures the public funds of that government. No authority was urged in support of such a position. What petitioners overlook is that in both the Pottorff and Sneeden cases, this Court was dealing primarily with the *powers of national banks* and it was in that connection in the Sneeden case that this Court said that the National Bank Act "*did not confer the power to pledge assets to secure any public deposits*" except those specified by specific Acts of Congress.

Further, while the Sneeden case did not involve a deposit of any United States government department, it did involve a public deposit in the sense that the deposit belonged to the municipality of Marion, Illinois. Since, as shown by the Cook County National Bank case, this Court has held that public deposits of the United States government have no priority over other national bank deposits, it is clear that nowhere has Congress indicated a policy of discriminating in favor of public deposits of the United States over public deposits of States, or political subdivisions of States. In the Sneeden case, precisely the same argument was made to the effect that the deposits there involved being public in character, it should be assumed that the power to secure them existed. It was shown in the Sneeden case (as distinguished from the Pottorff case) that the practice on the part of national banks of securing deposits of States and political subdivisions of States was widespread. In fact, in the Sneeden case, the Philippine Islands, appearing as amicus curiae, filed a brief before the decision and then filed a petition for rehearing and quoted therein a letter from the then Comptroller of the Currency

showing that the practice by national banks of securing public deposits of all sorts (including the deposits of the Philippine Islands) was widespread and had continued for many years. This Court considered these points and yet in the Sneeden case denied a rehearing March 12, 1934 (291 U. S. 651).

In addition, Congress has not confined the authority to deposit public money of the United States to national banks, and thus the public character of national banks does not enter the discussion. By the terms of the Act of Congress approved December 23, 1913, c. 6, Sec. 9, 38 Stat. 259, as amended (Sec. 332, Title 12, U. S. C.) Congress provided that "all banks or trust companies incorporated by special law or organized under the general laws of *any State*, which are members of the Federal Reserve System, when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money," and provided further in the same statute that "the Secretary of the Treasury shall require of the banks and trust companies thus designated satisfactory security, by the deposit of United States bonds or otherwise, for the safekeeping and prompt payment of the public money deposited with them and for the faithful performance of their duties as financial agents of the government." (The deposits in the District National Bank were not made until August 18, 1914, which was after the establishment of the Federal Reserve System (R. 2). Whether Congress had the power to thus legislate with respect to State banks is not in point here.)

As a matter of fact, with the creation by Congress in 1913 of the Federal Reserve System, the practice of using banks aside from Federal Reserve Banks as general depositaries for public money began to be decreased, with the result that in 1920, thirteen years before the District National Bank became insolvent, the Assistant Secretary of the Treasury wrote to the District National Bank that:

"Having discontinued all national bank depositaries in states where Federal Reserve Banks and branch Federal Reserve Banks are located and equipped to transact the government's business, the Treasury feels that it must, as a measure of consistency and administrative economy, discontinue national bank depositaries in the city of Washington where the office of Treasurer of the United States is located."[3]

In *Lewis* v. *Fidelity & Deposit Co., supra,* involving the deposit in a national bank funds of the State of Georgia, this Court reaffirmed its position, saying (at p. 564):

"In *Texas & P. R. Co.* v. *Pottorff*, 291 U. S. 245, and *Marion* v. *Sneeden*, 291 U. S. 262, decided after the entry of the judgment below, we held that a national bank had, prior to the Act of June 25, 1930, *no power to make any pledge to secure deposits except the federal deposits specifically provided for by Acts of Congress.*" (Emphasis supplied.)

3. The General Power Given to National Banks to Secure Public Deposits Relates Specifically to Public Money of the United States and Entrusts Only to the Secretary of the Treasury the Power to Designate the Depositaries and the Making of Deposits, and Such Designations are Coupled With Various Important Duties to be Performed by the Secretary and the Banks.

Congress has intended ever since the establishment of the national banking system by the National Bank Act of June 3, 1864, that *public money of the United States* shall be deposited in national banks only when such banks have been designated by the Secretary of the Treasury as depositaries of public money and financial agents of the government, and security taken therefor.

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[3] Page 37 of the separately printed appendix hereto.

Two statutes showing this congressional intent are, first, R. S., sec. 5153 (Sec. 90, Title 12, U. S. C.), derived from Sec. 45 of the original bank act. This section is as follows:

"Depositaries of public moneys and financial agents of Government.

"All national banking associations, designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them. The Secretary of the Treasury shall require the associations thus designated to give satisfactory security, by the deposit of United States bonds and otherwise, for the safekeeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government: *Provided*, That the Secretary shall, on or before the 1st of January of each year, make a public statement of the securities required during that year for such deposits. And every association so designated as receiver or depositary of the public money shall take and receive at par all of the national currency bills, by whatever association issued, which have been paid into the Government for internal revenue, or for loans or stocks; *Provided*, That the Secretary of the Treasury shall distribute the deposits herein provided for, as far as practicable, equitably between the different States and sections.

"Any association may, upon the deposit with it of public money of a State or any political subdivision thereof, give security for the safekeeping and prompt payment of the money so deposited, of the same kind as is authorized by the law of the State in which such association is located in the case of other banking institutions in the State."

veral important points arise in connection with this te, namely,

First, the statute provides that national banks, in order to act as public depositaries under this section, shall be designated as such by the Secretary of the Treasury. That this duty rests upon the Secretary of the Treasury only is clear from the language of the statute. As the United States Court of Appeals for the District of Columbia said in *O'Connor* v. *Rhodes*, 79 F. (2d) 146, 150; 297 U. S. 383:

> "The duty imposed on the Secretary, as we think, is personal and results from the statute we have been discussing, and that Congress meant its language and provisions to be taken literally, follows, we think, from the fact that by later acts, to which we shall now refer, Congress to cover the case of deposits of Federal funds made by others than the Secretary of the Treasury, has specifically provided for such cases by appropriate statutes."

Second, the selection and continuance of certain national banks by the Secretary of the Treasury as depositaries of the public money of the United States was not intended as a naked designation, but was to be coupled with the making by the Secretary of the Treasury of regulations with respect to such designations and the annual review by the Secretary of the Treasury of the securities required by the Secretary of the Treasury to secure such deposits of public money. The detailed safeguards with which the Secretary of the Treasury surrounds such designations of depositaries under Sec. 90 is shown by the copy of the regulations issued December 31, 1919, printed in the separately printed appendix hereto at page 14.

Third, the District National Bank of Washington was not designated by the Secretary of the Treasury as a depositary of public moneys to cover the amounts which would have been required by the deposits involved here. Printed in the separately printed appendix hereto at pages 36-40, are all of the designations of the District National Bank of Washington as a depositary of public

moneys from 1913 to 1933, inclusive. These designations show that on April 4, 1913, the District National Bank of Washington was designated as a depositary for balances up to $50,000.; that on November 15, 1917, such bank was designated only as a special depositary to receive proceeds of the sale of Treasury certificates of indebtedness; that on March 24, 1920, because of the transfer of public moneys in the District of Columbia to the Treasurer of the United States, all prior designations of the District National Bank of Washington as a public depositary were canceled; that on January 23, 1930, a previous designation of the District National Bank of Washington as a limited depositary of public moneys (proceeds from the sale of Treasury certificates of indebtedness, under a separate statute) was canceled. It resulted, therefore, that from 1920 until the date of the closing of the bank, the District National Bank of Washington did not hold any designation from the Secretary of the Treasury as a depositary for public moneys under Sec. 90, Title 12, U. S. C.

Furthermore, even had the District National Bank of Washington held such a designation from the Secretary of the Treasury, under Sec. 90, Title 12, U. S. C., this would not have changed the situation. Precisely such a situation arose in *Branch* v. *U. S.*, 100 U. S. 673, 674, where a clerk of a United States District Court acting under instructions from the Secretary of the Interior deposited in a national bank which had been regularly designated as a public depositary by the Secretary of the Treasury funds representing the proceeds of certain seized property. The money had actually been received by the United States Marshal and by him turned over to the clerk of the court and by the clerk of the court deposited in the bank to his own credit "as clerk." This Court held that the mere depositing of such money under such conditions in a regularly designated depositary did not make the money in question public money of the United States.

The other statute showing that deposits of public money of the United States can be lawfully made in banks only when such banks have been duly designated as authorized depositaries of public moneys, is the Act of March 4, 1909, c. 321, Sec. 96, 35 Stat. 1106, Sec. 182, Title 18, U. S. C., providing:

> "Every banker, broker, or other person not an authorized depositary of public moneys, who shall knowingly receive from any disbursing officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or shall use, transfer, convert, appropriate, or apply any portion of the public money for any purpose not prescribed by law; and every president, cashier, teller, director, or other officer of any bank or banking association who shall violate any provision of this section is guilty of embezzlement of the public money so deposited, loaned, transferred, used, converted, appropriated, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both."

4. WHENEVER CONGRESS HAS DESIRED TO AUTHORIZE THE SECURING OF DEPOSITS OF FUNDS IN PUBLIC CUSTODY WHICH MIGHT NOT BE, STRICTLY SPEAKING, UNITED STATES PUBLIC MONEY, IT HAS DONE SO BY A SPECIFIC ACT.

Examination of the Acts of Congress under which Congress has empowered various public officials to demand security when depositing designated classes of funds in national banks shows that Congress has always been specific in this regard and has never authorized such pledges by implication. This situation was referred to in footnote 11 at page 257 of the opinion of this Court in *Texas & P. R. Co.* v. *Pottorff*, *supra*, and again in *City of Marion* v. *Sneeden*, *supra*, at page 268. In each statute, Congress has made clear what public official was

to make the deposit and what public official was to designate the bank as a depositary. Obviously, if the designation of depositaries for public moneys of the United States was not to be confined to the Secretary of the Treasury and also was not to be confined to public moneys of the United States in the strict sense, there would have been no need or necessity for these various special Acts covering the securing of funds which were not public money in the strict sense, but which were in the custody of public officers of the United States, or officers of States or subdivisions thereof. The mere fact that Congress saw fit to pass a special Act in each case shows it intended that no funds in public officials' hands should be secured which were *not* required by a specific Act. A brief summary of such special specific statutes illustrates this point.

Proceeds of the collection of claims in behalf of the insolvent national banks—The deposit must be made only by the Comptroller of the Currency and must be made only in a "regular government depositary," and security required by the Comptroller of the Currency. (R. S., Sec. 5234, Sec. 192, Title 12, U. S. C.)

Bankruptcy funds—The statute provides that the depositary for bankruptcy funds shall be designated by the Bankruptcy Court by order and that the Court shall require "bonds to the United States, subject to the approval of the courts." By Sec. 15, Title 6, United States Code, Congress gave authority for the deposit of United States bonds in lieu of the giving of a bond.[4] Sec. 101, Title 11, U. S. C.

Indian moneys—The Secretary of the Interior may deposit the net receipts from the sales of surplus and unallotted lands and other tribal property belonging to any of the Five Civilized Tribes, in national or State banks in Oklahoma to be designated by him under rules and regulations to be made by him with respect to interest, time of

[4] Amended by the Act of June 22, 1938, c. 575, sec. 1, 52 Stat. 72.

deposit and withdrawal and the security therefor. Sec. 156, Title 25, U. S. C.

United States Postal Savings Funds—Only the Board of Trustees of the United States Postal Savings System may designate depositaries for United States Postal Savings Funds under rules and regulations as to the taking of security for such deposits from the banks. The Act extends the system to the District of Columbia, Alaska and Puerto Rico, but does not include Panama, Sec. 759, Title 39, U. S. C.

Public money of States and political subdivisions thereof—The securing of deposits by States and political subdivisions thereof is specifically limited to cases in which a law of the State in which the depositary is located authorizes other banking institutions in such State to so secure deposits. Sec. 90, Title 12, U. S. C.

Puerto Rico—With respect to Puerto Rico, a statute similar in terms with Sec. 90, Title 12, U. S. C., relating to the money of the United States, has been adopted by Congress under the Act of April 12, 1900, c. 191, Sec. 22, 31 Stat. 82, as amended, Sec. 780, Title 48, U. S. C., providing:

> "The treasurer shall collect and be the custodian of public funds, and shall disburse the same in accordance with law, on warrants signed by the auditor and countersigned by the governor, and perform such other duties as may be provided by law. He may designate banking institutions in Porto Rico and the United States as depositaries of the government of Porto Rico, subject to such conditions as may be prescribed by the governor, after they have filed with him satisfactory evidence of their sound financial condition and have deposited bonds of the United States or of the government of Porto Rico or other security satisfactory to the governor in such amounts as may be indicated by him; and no banking institution shall be designated a depositary of the government of Porto Rico until the foregoing conditions have been complied with. Interest on deposits shall be required and paid into the treasury."

This statute with respect to public funds of Puerto Rico was adopted by Congress regardless of the fact that in the same legislation it adopted Section 734, Title 48, U. S. C., providing that:

> "The statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws."

Respondent has not found any case wherein this Court has held valid the securing by national banks of any deposit, public or private, in such banks except where such securing of such deposit has been specifically authorized by a specific Act of Congress.

B—There is no Statutory Authority for These Pledges.

There was no statutory authority for the pledges, in the instant case, first, because they were not made and not pretended to have been made under the general authority given by Congress to the Secretary of the Treasury to enforce the securing of public money of the United States, second, because no Act of Congress specifically authorized the pledge of securities by national banks to secure deposits of Canal Zone money order funds, third, because there was no rule or regulation having the effect of an Act of Congress authorizing the pledging of the bank's assets to secure these deposits, and fourth, because the lack of statutory authority cannot be supplied by custom or usage or by the sanction and approval of the Comptroller of the Currency, or other executive officers.

1. *The Pledges Were Not Authorized by Sec. 90, Title 12, U. S. C. (R. S., Sec. 5153.)*

   (1) At the Time the Deposits Here in Question Were Made and Ever Since, It Has Been Recognized That They Did Not Constitute Public Money of

the United States and Did Not Fall Under Any Statute Authorizing The Securing of Deposits in National Banks.

The history of the making of the deposits involved here, and the giving of security therefor is shown by documents printed from pages 46 to 58, inclusive, of the appendix to the briefs for the petitioners. These documents show beyond dispute, first, that it was never considered that the funds deposited in the District National Bank of Washington were public moneys of the United States, and, second, it was understood from the beginning that such deposits were not covered by the laws regarding the designation of depositaries of public moneys.

As shown by these documents, the system was inaugurated at the instigation of W. W. Warwick, then Examiner of Accounts for the Isthmian Canal Commission, and later Comptroller of the Treasury of the United States, admittedly at that time the leading expert on public deposits in the United States. In his letter to Colonel Goethals, Chairman and Chief Engineer of the Isthmian Canal Commission, dated September 19, 1908, Judge Warwick explained that large amounts of money were being accumulated in the Panama Canal Zone from the proceeds of the sale of money orders to people residing on the Isthmus and that it was desirable to more adequately safeguard such funds. In such letter, Judge Warwick said:

> *"As the moneys of the Zone are not moneys of the United States, the laws regarding the designation of depositaries of public moneys do not apply."*

Judge Warwick then specifically recommended that such funds be deposited in the International Banking Corporation, with its main office in New York and branches in the Canal Zone, and mentioned specifically that such banking corporation "is not incorporated under the national banking law of the United States." He then recommended that an agreement for the securing of deposits with the Inter-

national Banking Corporation be made "from year to year through the Secretary of War," concluding:

> "The bank should furnish security to the satisfaction of the Secretary of War, either in the form of a deposit of bonds or other marketable securities payable to the Treasurer of the Canal Zone, or by the guaranty of three or more surety companies to the satisfaction of the Secretary of War."

Colonel Goethals as Chairman of the Isthmian Canal Commission on October 21, 1908, forwarded Judge Warwick's letter to the Secretary of War with a recommendation for its approval and in doing so, said:

> *"As noted in Mr. Warwick's letter, the moneys of the Zone are not moneys of the United States, so that the laws regarding the designation of depositaries of public moneys do not apply."* (Emphasis supplied.)

Thereafter, Colonel Goethals gave notice to the Secretary of War on October 24, 1908, that the International Banking Corporation had withdrawn its offer to accept deposits of Panama Canal funds and recommended to the Secretary of War that one of several other banking corporations be designated as a depositary.

Thereafter, other Secretaries of War proceeded to designate the District National Bank of Washington and the Commercial National Bank of Washington as depositaries of Panama Canal funds, made deposits in such banks and obtained security therefor. Before taking the last mentioned step, the Secretaries of War received advice from a Secretary of the Treasury and Assistant Secretary of the Treasury and a Comptroller of the Currency with regard to the safety of the banks to be designated and with regard to the kind of security then to be taken, but in the last mentioned correspondence, there was not even a pretense that the designations were being made under Sec. 90, Title 12, U. S. C., or under any other law of the United States, or that the designation of the banks was being made by the

Secretary of the Treasury, or that the securities taken were fixed by the Secretary of the Treasury under rules and regulations issued by him under Sec. 90, Title 12, U. S. C. It results, therefore, that there can be no question that everyone concerned understood that the money was being deposited by the Secretary of War, not by the Secretary of the Treasury, that the banks were being designated by the Secretary of War, not by the Secretary of the Treasury, that the moneys involved were not public moneys of the United States, and that the contracts for the securing of the deposits were not being made under the statutes relating to the securing of public moneys of the United States. All suggestions, therefore, to the contrary made in connection with this case appear to be afterthoughts.

(2) The Holding of Judge Warwick and Colonel Goethals and the Secretary of War Was Based Upon Decisions of this Court.

The basis for the holding by Judge Warwick, by Colonel Goethals and by the then Secretary of War that the money order funds derived from the Canal Zone were not public money of the United States and were not covered by the statutes for the deposit and securing of United States public money was the well documented opinion of the Comptroller of the Treasury Tracewell given to the Chairman of the Isthmian Canal Commission July 26, 1904.[5]

The request for such opinion from the Chairman of the Isthmian Canal Commission was for a ruling on a number of questions including whether various statutes of the United States, such as statutes requiring advertisements for bids on public works, and so forth, were applicable to the Panama Canal Zone. Among other questions asked was the following:

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[5] 11 C. D. 36. This decision of the Comptroller is referred to in footnote 12, page 24, of petitioners' brief and is printed in full at page 40 of the separately printed appendix to this brief.

"Are the revenues from the Government of the Canal Zone public moneys of the United States and should all receipts and disbursements of the same be accounted for to the Treasury Department?"

This question is precisely the question here involved. In his opinion, the Comptroller of the Treasury held that the Canal Zone was not a territory "incorporated" into the United States and was not covered by general federal statutes. Quoting from *Downes* v. *Bidwell*, 182 U. S. 244, 245, and *Fleming* v. *Page*, 9 How. 603, 617, Comptroller Tracewell concluded that "said Zone is not a part of the United States within a full meaning of the Constitution and laws of the country. The local revenues of said Zone must therefore be handled in accordance with such rules and regulations as the President and the Commission may authorize." The then Comptroller of the Treasury then answered the specific question of the Chairman of the Commission by stating that:

"It does not seem necessary to decide whether those revenues are in a general sense moneys of the United States because I am of opinion that they are not such moneys of the United States as are required to be accounted for to the Treasury Department." (Emphasis supplied.)

The Isthmian Canal Commission itself recognized that there was no congressional legislation whereby the Commission could secure the advantages of a government depositary for money order funds, as shown by the following minutes of a meeting of such Commission held May 2, 1906.

"The Chairman also stated that steps were being taken to establish a money order system on the Isthmus, explaining that such a system would not only serve as a convenience to the employees, but would enable the Commission to avail itself of the money received, following each pay period, reducing to that extent the necessary shipment of funds required monthly by the Disbursing Officer.

"Pursuant to the authorization of the Secretary of War, *and in the absence of Congressional legislation whereby the Commission could secure the advantages of a Government depositary on the Isthmus, through which to conduct its financial transactions,*[6] it was—

"*Resolved,* That the action of the Chairman in authorizing the shipment of United States money to the Disbursing Officer on the Isthmus, in response to his requisition for funds, and the action of the Governor of the Canal Zone, after conference with the Chairman and approved by the Chairman while on the Isthmus, for the immediate installation of a postal money-order system in the Canal Zone post offices, be approved." (Emphasis supplied)

(3) Petitioners Admit in Their Answer That the Funds Involved Were not Made Under Sec. 90, Title 12, U. S. C.

The basis for respondent's position that the funds involved here were never moneys of the United States and that the pledge here being attacked was not made under Sec. 90, Title 12, U. S. C., has been discussed in some detail, but the fact is that the issue is not before the Court because of admissions made in the answer of petitioners. As shown above in the statement of facts, in the answer to paragraph numbered 9 of the bill of complaint (R. 20) petitioners admitted "that the funds and money referred to in paragraph numbered 7, to wit, the so-called Panama Canal funds, are not public funds[7] and are not part of the revenue of the United States; that they are not subject to the control of the Secretary of the Treasury in his official capacity as such Secretary in respect of public moneys of

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[6] While the remainder of the above quoted minutes is quoted verbatim at page 19 of the appendix to the briefs for the petitioners, the part in italics referring to the absence of congressional legislation whereby the Commission could secure the advantages of a government depositary is omitted.

[7] See footnote 1.

the United States; but in this connection, they aver that the interest accruing on said moneys is a part of the revenues of the United States; * * * " Further, petitioners admitted "that the District National Bank was never designated by the Secretary of the Treasury as a depositary of the Government of the Canal Zone * * *". And further, petitioners admitted "that the Secretary of the Treasury did not exact of the said bank the pledging of the Panama Canal funds * * *." Further in the answer, it was averred that the Secretary of the Treasury was consulted about the deposits and that the funds in question were funds for the payment of which the United States "is responsible and obligated." The record is clear, therefore, that under the issues as framed, it is admitted that the funds involved are not public funds and are not part of the revenues of the United States; that they were not subject to the control of the Secretary of the Treasury; that the District National Bank was never designated as a depositary for Canal Zone funds by the Secretary of the Treasury and that the pledges in question were not exacted by the Secretary of the Treasury.

2. *There is no Specific Act of Congress Authorizing the Pledge of Securities by National Banks to Secure the Deposits of Panama Canal Zone Money Order Funds.*

It is not even urged by petitioners that any specific Act of Congress exists authorizing the deposit of Canal Zone funds in national banks, that any United States statute requires the Secretary of War, or any other officer of the Canal Zone, to exact security of national banks for Canal Zone deposits, or that there is any statute which grants to national banks the power to pledge their assets to secure deposits of Canal Zone funds.

To fill this gap, petitioners rely upon an "accounting circular" issued by the Governor of the Canal Zone which petitioners contend authorized the contract between the Secretary of War and the District National Bank and which

regulation in turn according to petitioners, was inferentially ratified by Congressional enactment. Petitioners also urge that because the deposits consisted of money order funds, and because Congress had provided that Postal Savings Funds in the Canal Zone should be covered by such United States laws as are not inapplicable, authorization existed for the pledge. Considering these contentions in the order above referred to, we must turn to the various statutes dealing with the Government of the Canal Zone.

In considering the various letters and circulars relied upon by petitioners to establish the implied authority for these pledges, it is necessary to keep in mind the following basic considerations:

(1) The court below held that the documents relied upon by the petitioners did not constitute legal authority for the pledge (100 F. (2d) 690, 688).

(2) The power to be exercised in order to make the pledges valid is the amendment of the charter of a national banking association, a creature of Congress, and Congress alone has the power to make such amendment.

(3) As of June 19, 1934, before this suit was filed, there was published under the authority of the Act of Congress approved May 17, 1928 (45 Stat. 596), a Code of Laws for the Canal Zone,[8] which, according to its preface, "embraces all the laws, relating to or applying in the Canal Zone, except such general laws of the United States as relate to or apply in the Canal Zone." Furthermore, it was stated in the preface to this Code that "the material included in the Code has its source in acts of Congress, in certain acts and ordinances of the former Isthmian Canal Commission which were ratified and confirmed as valid and binding by Congress in the Panama Canal Act of 1912, and, in a limited number of sections, in Executive orders of the

[8] "Canal Zone Code," United States Government Printing Office, Washington, 1934.

President which were likewise ratified and confirmed by Congress."

Nowhere in this publication does there appear the "accounting circular" relied upon by petitioners as the basis for the legality of these pledges, and nowhere in this publication does there appear any other authorization for the Secretary of War, or anyone else, to demand or require security for the deposit in national banks of Canal Zone funds.

By the Act of June 28, 1902, c. 1302, 32 Stat. 481 (Spooner Act) Congress authorized the President to acquire for the United States from the Republic of Columbia perpetual control of a strip of land not less than six miles wide extending from the Caribbean Sea to the Pacific Ocean. Under Sec. 7 of the Act, the Isthmian Canal Commission was created in order to "enable the President to construct the canal and works appurtenant thereto."

The Act of April 28, 1904, c. 1758, 33 Stat. 429, authorized the President to take possession of the Canal Zone, and under Sec. 2, it was provided that until the expiration of the 58th Congress, the power to make all rules and regulations necessary for the government of the Canal Zone should be vested in such person or persons, and should be exercised in such manner as the President might direct.

On May 9, 1904, the President wrote to the Secretary of War, stating that inasmuch as it was impractical for him personally to supervise and govern the Canal Zone, he was delegating the power to make all rules and regulations for the government of the Zone to the Isthmian Canal Commission, to be exercised under the supervision and direction of the Secretary of War. This letter is set out in full in the appendix, p. 71, and delegates the power of making rules and regulations for the Canal Zone to the Isthmian Canal Commission. It gives the Secretary of War general supervisory powers over the acts of that Commission, but it does not give the Secretary of War any authority to adopt any rules or regulations for the Canal Zone except through the Isthmian Canal Commission.

As is pointed out in petitioners brief, by 1912, there was a great deal of doubt as to the legality of various acts and regulations by which the Canal Zone had been governed. Accordingly, in 1912, Congress, by Sec. 2 of the Act of August 24, 37 Stat. 560, provided:

> "That all laws, orders, regulations and ordinances adopted and promulgated in the Canal Zone by order of the President for the Government and sanitation of the Canal Zone and the construction of the Panama Canal, are hereby ratified and confirmed as valid and binding until Congress shall otherwise provide."

While the section of the Act, adopted in 1912, quoted above, ratified and confirmed "all laws, orders, regulations and ordinances" in effect in the Canal Zone by authority of the President, it is not even claimed by petitioners that prior to the enactment of the Act, there was any law, order, regulation or ordinance authorizing or requiring the securing of Canal Zone funds. The Act further empowered the President to discontinue the Isthmian Canal Commission when he saw fit. It will be noted that this Act does not and could not ratify future laws, orders, regulations or ordinances of the Canal Zone, though it does give legality to certain orders, regulations, and so forth, that had been adopted prior to 1912.

The effect of the Act of August 24, 1912 was thoroughly reviewed by this Court in *McConaughey* v. *Morrow*, 263 U. S. 39, wherein it was pointed out that it was expected to complete the construction of the Panama Canal in 1913, and that Congress and the then President recognized that upon the finishing of construction work, the status of the Panama Canal Zone naturally would change and that hence, new legislation was needed. In this Court's opinion, reference was made particularly to Sec. 2 of the Act of August 24, 1912, quoted *supra*, whereby Congress ratified and confirmed all laws, orders, regulations and ordinances theretofore promulgated by the President for the government of the Panama Canal Zone. Involved in *McCon-*

aughey v. *Morrow, supra,* was a regulation of the Isthmian Canal Commission giving free quarters, electric current, and so forth to Canal Zone employees. It was urged in that case that the Act of 1912 ratified and confirmed such regulations, but this Court denied such contention, saying (at p. 48):

> "This means laws needed and enacted to constitute the government, promote sanitation, and generally aid the construction of the canal. • • • It was only those regulations which rose to the dignity of laws which required ratification. • • • This would be to put innumerable administrative orders and rules adopted in the work, which were necessarily subject to change from time to time as conditions changed and the work progressed, into a strait-jacket, entirely inconsistent with the broad authority of the President granted in the Spooner Act and renewed in Sec. 4 of the same Canal Act of 1912."

Executive Orders and Governor's Circulars.

By Executive Order of January 27, 1914, the President erminated the services of the Isthmian Canal Commission nd set up a permanent organization for the government of he Canal Zone.[*]

Since this Executive order is relied upon by petitioners one of the chief sources of the implied authority for the action of the pledges involved here, the terms of such xecutive Order become important. The only part of such xecutive Order (which by its terms became effective April 1914) important here was the paragraph dealing with "accounting department." In that paragraph there urs the following significant provision:

> "Within all limits fixed by law, the duties and financial responsibilities of the officers and employees charged with the receipt, custody, disbursement, auditing and accounting for funds and property *shall be*

[*] Pages 48-51 of the separately printed appendix hereto.

prescribed in regulations issued by the Governor, with the approval of the President." (Emphasis supplied.)

It is under the authority claimed to have been given to the President by the Act of Congress of August 24, 1912 to issue rules and regulations for the government of the Panama Canal Zone, and under the just quoted Executive Order of the President dated January 27, 1914 and effective April 1, 1914, that it is claimed that there was issued by the Governor of the Panama Canal Zone, circular No. 660-2 dated April 1, 1914, (reprinted in part at pp. 25-27 in the appendix to petitioners' briefs) containing the following provision:

> "For the funds of The Panama Canal, he (the Collector) shall take the Paymaster's receipts; for Canal Zone, money order, postal savings bank, clubhouse, and other trust funds and security deposits, he shall take the draft of the Paymaster on the Treasurer of the United States and shall deposit same in depositaries under the contracts entered into by the Secretary of War. * * * "

Several important points will be noted in connection with this "circular." First, as stated above, the authority for the Governor to make it can rest solely upon the Executive order of the President dated January 27, 1914. As shown by the quotation above from that Executive order, all regulations to be issued by the Governor covering the receipt, custody, disbursement, auditing and accounting for funds and property were to be "within the limits fixed by law" and were to be "prescribed in regulations issued by the Governor, *with the approval of the President.*" In a footnote on page 27 of petitioners' brief, it is stated that "it does not affirmatively appear that this regulation was approved by the President." It is added that "such approval may legitimately be inferred from the promulgation of the set of regulations upon the first day of the Governor's authority under the Executive order of January 27,

1914." Without the President's approval, the circular (called by petitioners a regulation) was ineffective. A complete copy of circular No. 660-2, as obtained from the office of the Panama Canal, Washington, D. C., is printed in the separately printed appendix to this brief at pages 51-55. It speaks for itself. Obviously, it is the Act of the Governor, not of the President. In 1922, there was published a volume entitled Executive Orders Relating to the Panama Canal (March 8, 1904 to December 31, 1921).[10] This publication contains hundreds of orders of Presidents and Secretaries of War covering the smallest details of government activities in the Panama Canal Zone. The documents contained therein even cover office hours for Canal Zone employees. It contains the Executive Order of the President dated January 27, 1914, quoted above, but *nowhere in such volume is there contained the circular dated April 1, 1914, upon which petitioners rely as creating the authority for the securing of the deposits involved in this case.* Similarly, such circular is not included and is not ever referred to in the Canal Zone Code approved June 19, 1934 referred to above, which as stated previously "embraces all the laws relating to or applying in the Canal Zone, except such general laws of the United States as relate to or apply in the Canal Zone."

Neither in form nor content does this circular require the taking of security for deposits in national banks. Certainly it could not have referred to "the contract" entered into by the Secretary of War with the District National Bank because the contract between the Secretary of War and the District National Bank was not made until subsequently, or on August 18, 1914 (R. 2). Certainly it does not comply with the sort of rule or regulation contemplated by the Act of Congress of August 24, 1912 and the Executive Order of the President of January 27, 1914.

[10] The Panama Canal Press, Mount Hope, C. Z., 1922.

And yet, with one exception noted below, every argument by petitioners as to the authorization of the pledge here questioned goes back either to this circular, or to a similar circular issued in 1923 (Governor's Circular No. 660-61), which likewise was not approved by the President. (See page 28 Petitioners' Brief.)

There was no Ratification by Congress.

In the argument below, it was urged that the securing of Panama Canal Zone deposits had been ratified by the Act of Congress of August 24, 1912, c. 390, 37 Stat. 560, and specifically by the following provisions therein:

> "Sec. 2. That all laws, orders, regulations or ordinances adopted and promulgated in the Canal Zone by order of the President for the government and sanitation of the Canal Zone and the construction of the Panama Canal are hereby ratified and confirmed as valid and binding until Congress shall otherwise provide. The existing courts established in the Canal Zone by Executive order are recognized and confirmed to continue in operation until the courts provided for in this Act shall be established. (Sec. 1309, Title 48 U. S. C.)."

This contention is not made here because obviously an Act of Congress of August 24, 1912, could not ratify and confirm a "circular" issued April 1, 1914.

However, it is urged here that the "practice" of securing Panama Canal Zone deposits was affirmatively confirmed and approved by congressional statute by the following congressional statutes.

Secs. 6 and 7 of the Act of August 21, 1916, c. 371, 39 Stat. 528:

> "Sec. 6. That deposit money orders issued in the Canal Zone in lieu of postal savings certificates in accordance with the rules and regulations heretofore established by the President, or that may hereafter be

established by him shall bear interest at a rate not exceeding two per centum per annum.

"Sec. 7. That the interest received from the Canal Zone money-order funds deposited in banks under Canal Zone regulations shall be available to pay the interest on deposit money orders authorized by the preceding section. Such interest shall also be available to pay any losses which are chargeable to the Canal Zone postal service."

With respect to Sec. 6, the reference therein to the "rules and regulations heretofore established by the President" relating to deposit money orders made no reference to the deposit of money order funds in national banks in the United States or the giving of security for such deposits. The Executive Order of the President referred to was the Executive Order issued by President Wilson September 5, 1914, reading as follows:

"By virtue of the authority vested in me, I hereby establish the following order for the Canal Zone

"Section 1. The Executive Order of September 8, 1911, establishing the Postal Savings System in the Canal Zone, is hereby repealed, *Provided,* That accounts, opened in accordance with that order, and the regulations established thereunder, shall continue as prescribed in said order and regulations until they are finally closed by the withdrawal of deposits.

"Section 2. For the accommodation of persons desiring to deposit their savings in the post offices of the Canal Zone, money orders may be issued in the Canal Zone payable to the purchaser at the office of issue, for which no fee shall be charged.

"Section 3. This order shall take effect from and after October 1, 1914.

"WOODROW WILSON.

"The White House,
5 September 1914."

With respect to Section 7 of the Act of Congress of August 21, 1916, quoted above, it is urged by petitioners that such section constituted ratification of the Governor's circular quoted above dated April 1, 1914. That such section constituted a recognition that money order funds of the Canal Zone *were being deposited* in banks may be admitted. That such section constituted ratification of the securing of Canal Zone money order deposits obviously must be denied. In support of the theory of ratification in this indirect way, petitioners cite *Mason* v. *Tax Commission*, 302 U. S. 186; *Mattingly* v. *District of Columbia*, 97 U. S. 687; *Tiaco* v. *Forbes*, 228 U. S. 549, 556; and *Swayne & Hoyt, Ltd.* v. *U. S.*, 300 U. S. 297.

Mason v. *Tax Commission, supra*, is singularly inapplicable here. That case was whether the United States had acquired exclusive legislative authority over certain territory to be used in connection with the Grand Coulee Dam so as to debar the State from exercising any legislative authority, including its taxing and police power in relation to the property and activities of individuals and corporations within the territory (p. 197). Congress had passed an Act by which it "validated and ratified" all the "contracts and agreements" which had been executed in connection with the Grand Coulee Dam (p. 196). This Court held (at p. 208) that "the deliberate and ratifying action of Congress" gave the force of law to the prior official action even if that action was unauthorized when taken. But in Section 7 of the Act of Congress of August 21, 1916, nothing whatever is said by Congress about ratifying or confirming anything. The most that can be said of such section is that it recognized that Canal Zone officials had been depositing Canal Zone money order funds in banks under regulations.

Mattingly v. *District of Columbia, supra*, is not authority for the position urged by petitioners. The case was one to enjoin assessments for street improvements in the City of Washington. The plaintiff contended that the improvements and assessments were unauthorized and illegal. In

support of the legality of the assessment, there was cited an Act of Congress of June 19, 1878, enacted subsequent to the making of the assessments. That Act preemptorily directed the Commissioners of the District of Columbia to enforce the collection, according to the existing laws, of all assessments for special improvements in respect of which the said assessments were made. It also authorized the Commissioners *to revise* such assessments within thirty days from the passage of the Act and correct the same, so far as the charges were erroneous and excessive. This Court held that such Act was a confirmation of what the Board of Publics Works had done previously. Under such circumstances, this Court held that the assessments in question had been "ratified" by Congress but such a situation does not exist here. Section 7 of the Act of August 21, 1916 merely authorized the use of interest received from the deposit of Canal Zone money order funds.

Tiaco v. *Forbes, supra*, is even less in point. That was a suit for personal damages against the Governor General of the Philippine Islands and others for the alleged illegal deportation of a Chinese person. Immediately after the deportation, the Philippine Legislature passed an Act providing that the action of the Governor General was "approved and ratified and confirmed and in all respects declared legal, and not subject to question or review." Confirming the view urged by Mr. Justice Frankfurter, this Court held that the ratifying act made the action as legal as though the Legislature had previously authorized it. But in that case the ratifying act was specific and unequivocal and left nothing to inference. Here, there is no direct ratification or confirmation whatever, but everything is left to inference.

The only other Act relied upon by petitioners as constituting a ratification of the practice of securing the deposits in question was the Act of September 21, 1922, c. 350, 42 Stat. 1008, Sec. 1324, Title 48, U. S. C., which merely raised the interest rate to three per cent from two per cent

fixed by Sec. 6 of the Act of August 21, 1916, quoted above. It will be recalled that such section 6 of the Act of August 21, 1916, referred specifically to the deposit money orders issued "in accordance with rules and regulations heretofore established by the President" and that such rules and regulations obviously referred to the Executive Order of the President of January 27, 1914, creating the money order system in the Canal Zone, and which made no mention whatever either of the deposit of such money order funds or the securing thereof.

It results, therefore, that the only Act of Congress which purported to give anyone the power to make the sort of rule or regulation which would be required to authorize the securing of Panama Canal Zone funds was the Act of August 24, 1912, that in accordance with such Act, the President issued his Executive Order of January 27, 1914, prescribing that any regulation regarding the custody for funds and property of the Canal Zone must be issued by the Governor, with the approval of the President, that the Governor never issued any regulation specifically requiring the securing of Canal Zone deposits and in any event that the President never approved any regulation whatever on the subject and finally that Congress never in terms ratified or confirmed any action by the President or the Governor on this subject.

POSTAL SAVINGS.

It remains only to consider the Congressional Act of February 16, 1933, 47 Stat. 812, Sec. 1323a, Title 48, U. S. C., also relied on by petitioners as furnishing the requisite authority for exacting the pledge of assets to secure money order deposits.

Unlike the Act of 1912, the Act of February 16, 1933 does not deal with regulations, does not ratify or confirm anything, but simply extends to the Panama Canal Zone such United States Postal Laws "as are not inapplicable to the conditions existing in the Canal Zone." This Act provided:

"Section 1. The Postal Service of the Canal Zone shall be governed by such of the laws, rules, and regulations of the Postal Service of the United States as are not inapplicable to the conditions existing in the Canal Zone, and the Governor of the Panama Canal is authorized to establish new post offices or discontinue those already established, to provide such rules and regulations as are necessary for the operation of the service, to appoint the personnel thereof, and to prescribe the postage stamps and other stamped paper which shall be used in such service: *Provided, however,* That the expenses of operating the Canal Zone Postal Service shall be defrayed, so far as possible, from the revenues derived therefrom, the use of which for that purpose is hereby authorized."

The theory of petitioners is (brief for petitioners p. 41) that by means of this Act, Congress transposed to the Panama Canal Zone the provisions of the Act of Congress of June 25, 1910, c. 386, Sec. 1 et seq., 36 Stat. 814, Sec. 751, 759, Title 39, U. S. C., creating the United States Postal Savings system. Section 751 of that Act created a Board of Trustees for the control, supervision and administration of the Postal Savings System. Section 759 provided that postal savings funds received under such system should be deposited in solvent banks, national or State, should bear certain rates of interest and that "the Board of Trustees shall take from such banks such security in public bonds or other securities, authorized by the Act of Congress or supported by the taxing power, as the Board may prescribe, approve and deem sufficient and necessary to insure the safety and prompt payment of such deposits on demand." Such section then described in detail the method of making the deposits and taking the security, providing for the setting up of a reserve of five per cent, and providing for the investment of surplus funds in United States bonds. The system was by the terms of the Act limited to the Continental United States, the District of Columbia, Alaska and Porto Rico.

App. 55

By an Executive Order dated September 1, 1911, President Taft created a Postal Savings System for the Canal Zone. By Sec. 2 of that order, the President created a Board of Trustees "for the control, supervision and administration of the postal savings depositary offices designated and established under the provisions of this order, and of the fees received as deposit at such postal savings depositary offices by virtue thereof." By Sec. 7 of such order, the President required that postal savings funds received under the order "shall be deposited with the Treasurer of the Canal Zone under such regulations as the Board of Trustees may prescribe." In other words, under this Executive Order, the President duplicated in the Canal Zone the Postal Savings System created the previous year in the United States, *except* that he specifically required the funds arising from such system to be deposited with the Treasurer of the Canal Zone. *Neither in the Executive Order nor in any regulation promulgated thereunder was any provision whatever made for the depositing of such funds in banks or for the securing of such deposits.*

Thereafter, on September 5, 1914, as shown above, President Wilson repealed the Executive Order of President Taft[11] and in Sec. 2 of his repealing Executive Order provided that "For the accommodation of persons desiring to deposit their savings in the post offices of the Canal Zone, money orders may be issued in the Canal Zone payable to the purchaser at the office of issue, for which no fee shall be charged."

It is urged by petitioners that the provisions of the Federal statute for deposit by the Board of Trustees was inapplicable; but that the provisions for taking security were fully applicable to local conditions; and that hence, the Act of Congress of February 16, 1933, authorized the demand of the pledges involved here.

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[11] Page 64 in the separately printed appendix hereto.

On the contrary, the theory of the United States Postal Savings System was just as applicable in the Canal Zone as it was in the United States. With respect to the United States system, Congress in great detail set up a Board of Trustees to safeguard postal savings funds. President Taft set up a similar Board of Trustees in the Canal Zone, but did not see fit to provide for the deposit of Canal Zone postal savings funds in banks, or to require the banks giving security for such deposits. He chose rather to provide that the funds should be deposited with the Treasurer of the Panama Canal Zone. It is obvious that the Postal Savings System in the Canal Zone, which extended only from 1912 to 1914, had nothing to do, by implication or otherwise, with the deposits involved here. On this point, the Court below said (at p. 686):

> "It is significant in this respect that the Act creating the United States Postal Savings System directed and required the Board of Trustees provided for therein to take security from banks in which the postal savings funds were deposited, whereas in the Executive Order creating the Canal system, and in the Act which authorized it there was no similar requirement. The Board was left free to make rules and regulations for the general conduct of the system. So far as appears, no regulation requiring banks to give security for deposits was ever made. The Executive Order itself designated the Treasurer of the Zone as depository or custodian of the funds."

From the foregoing it is seen that there are only two enactments (one the Act of the Isthmian Canal Commission; the other, an Act of Congress) which seek to interpolate United States postal laws as such into the postal laws of the Canal Zone. The first of these, Act No. 8 of the Isthmian Canal Commission (page 16 of Appendix to Petitioners' Briefs) was passed on September 2, 1904, some six years before the United States postal laws contained a postal savings system, and which, therefore, could not incorporate provisions of the United States

Postal Savings System into the postal laws of the Canal Zone. The other enactment is the Act of February 16, 1933 passed by Congress and extending to the Canal Zone such laws of the United States postal service as are not inapplicable to conditions existing there. When this latter Act was passed, the Postal Savings System in the Canal Zone had been repealed for some nine years. So that it is clear that provisions of the United States Postal Savings System were not made applicable to the Panama Canal Zone by the 1933 Act and consequently, not made part of the Canal Zone Postal Laws by such Act.

Furthermore, by the very terms of the Act of February 16, 1933,[12] Congress provided "that all other laws for the operation of the Canal Zone postal service, excepting section 43a of the Penal Code of the Canal Zone, are hereby repealed."

Again, the report to the House of Representatives of its committee on Interstate and Foreign Commerce[13] discussed the purpose of the bill in detail and it is noteworthy that no where in such report, or in the letter of the then Secretary of War quoted in it, was any reference made to the securing of deposits in national banks of Canal Zone postal funds. The committee report stated that "this bill (H. R. 7514) repeals all existing laws of the Canal Zone with reference to the postal service and provides new legislation upon that subject." The only mention in the report of money order funds was reference to the fact that it was intended that "revenues derived from the deposit money order funds" were to be made a part of the general postal revenues. The only possible application, therefore, that this Act could have to the fund involved in this case would be with reference to the sum of $3,535.37, which sum, according to the record (R. 3) was paid to the Secretary of War in addition to the proceeds of the pledged bonds, such sum

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[12] Page 57 of the separately printed appendix hereto.

[13] Report No. 526, 72nd Congress, 1st Session, printed at pages 59-67 of the separately printed appendix hereto.

epresenting accrued interest upon the deposit balances in he District National Bank to and including September 24, 933, when delivery to the then Secretary of War was made.

Even if these Acts be considered as making United States ostal Laws other than those relating to postal savings pplicable to the Canal Zone, the only other provision uthorizing the taking of security for United States postal nds is found in Sec. 90, Title 12, U. S. C. (R. S., Sec. 153) and there was no compliance with that section.

Furthermore, as shown above, Congress with respect to uerto Rico (Sec. 734, Title 48, U. S. C.) adopted a statute lmost identical in terms with the Act of February 16, 1933, elating to the Panama Canal Zone and provided that the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise rovided" shall have the same force and effect in Puerto ico as in the United States and yet, with respect to Puerto ico passed a specific Act that the Treasurer of Puerto Rico hould deposit public funds of that Island in depositary anks and specifically authorized him to require the securng of such deposits. Congress passed no similar Act for anama.

It is manifest, therefore, that petitioners have failed to oint out any Act of Congress which either authorizes the ecretary of War to accept security from a depositary for anal Zone postal funds, or which requires such unauthored depositary to give security for deposit of postal funds f the Canal Zone. There is nothing in the postal laws of he United States or of the Canal Zone which purports to ive legality to the pledge now before this Court and it fols of necessity that the pledge is illegal and void under he principles of law laid down by this Court in the *Potorff* and *Smeeden* cases, *supra*, and followed by the court elow.

Administrative Practice Cannot Supply Lack of Specific Statutory Authority so as to Legalize Pledge.

Having failed to point to any specific authorization for the pledges here in question, petitioners next rely upon what they denote as "the consistent administrative practice." This argument of petitioners states that because officials of the Treasury Department had erroneously assumed that national banks had an inherent power to pledge their assets to secure deposits of public money of the United States, such power must be considered as in fact existing. In view of the decisions of this Court previously referred to, it is quite clear that national banks have no such power and manifestly no administrative practice—no matter how consistent—can create a power where none exists.

In *City of Marion* v. *Sneeden*, 291 U. S. 262, the Court said (at p. 269):

> "In some States national banks had, prior to the 1930 amendment, frequently pledged assets to secure public deposits of the State or of a political subdivision thereof; comptrollers of the currency knew that this was being done; and they assumed that the banks had the power so to do. But the assumption was erroneous. The contention that such power is generally necessary in the business of deposit banking has not been sustained."

In view of Sec. 194 of Title 12, U. S. C., which requires a ratable distribution of an insolvent bank's assets among its creditors, and of Sec. 91 of Title 12, U. S. C., which prohibits and declares void preferential transfers of a bank's assets in contemplation of insolvency, it cannot be argued that any custom or usage could legalize this pledge.

On this point, this Court said in *Texas & Pacific Ry.* v. *Pottorff*, 291 U. S. 245, 255:

> "To permit the pledge would be inconsistent with many provisions of the National Bank Act which are designed to ensure, in case of disaster, uniformity in

the treatment of depositors and a ratable distribution of assets. Compare *Davis* v. *Elmira Savings Bank*, 161 U. S. 275, 290."

This question of custom and usage has been consistently sserted as a defense and uniformly overruled in various ircuit court opinions, as to which this Court has con-istently denied certiorari.

Leonard v. *Gage*, 94 F. (2d) 19, 26, C. C. A. 4th Cir., cert. denied, 303 U. S. 653;
O'Connor v. *Rhodes*, 79 F. (2d) 146, 151 (App. D. C.), cert. denied, 296 U. S. 568;
City of Fort Worth v. *McCamey*, 93 F. (2d) 964, 968, C. C. A. 5th Cir., cert. denied, 304 U. S. 571;
City of Chicago v. *Joseph*, 95 F. (2d) 444, 446, C. C. A. 7th Cir., cert. denied, 304 U. S. 578;
Hood v. *Hardesty*, 94 F. (2d) 26, 29, C. C. A. 4th Cir., cert. denied, 303 U. S. 661;
Granzow v. *The Village of Lyons*, 89 F. (2d) 83, 85, C. C. A. 7th Cir.

Indeed the main document relied upon by petitioners as tablishing the "consistent administrative practice" is t forth on pages 42-45 of the brief in No. 6, and is an tract from a memorandum which accompanied a bill ich the Treasury Department sought to have enacted as amendment to Sec. 90 of Title 12, U. S. C. The bill was ver enacted by Congress and the memorandum would em to be of little value.

However, it should be noted that while the memorandum dicates that the Treasury Department may have assumed at national banks had the power to pledge assets to se-re deposits of federal funds, it also definitely shows that a result of the *Pottorff* and *Sneeden* cases, the Trea-ry officials realized that their assumption was erroneous d that no such power in fact existed. Thus, part of the morandum (p. 43 of petitioners' brief in No. 6) in re-ring to the *Sneeden* and *Pottorff* cases, states:

> "The court took the position that national banks have no implied power to give security for deposits of public money, notwithstanding the fact that for more than 60 years national banks have been giving such security with the approval of the Comptroller of the Currency."

As realized by the Treasury officials, the decisions in the *Pottorff* and *Sneeden* cases definitely clarified any doubt that might have existed as to the National Bank Act having conferred an implied power upon national banks to pledge assets.

Since these decisions there is no longer any question of the absence of such power and consequently, there is no basis for looking to administrative construction as a method of construing an ambiguous statute. No ambiguity exists, unless this Court's decisions are to be ignored, nor do any of the cases cited by petitioners support the proposition that where a power has been held not to exist, administrative practice—no matter how long continued—can create such power.

In *U. S. v. Midwest Oil Co.*, 236 U. S. 459, the case principally relied upon by petitioners in this connection, the rule is clearly announced that custom and usage cannot create a power when none exists, but at best may raise a presumption that such power exists. As was said by the Court (at p. 474):

> "Nor do these decisions mean that the Executive can, by his course of action, create a power."

The case of *Berger* v. *Chase National Bank*, C. C. A. 2d, decided July 24, 1939, is not in point. In the *Berger* case, the Circuit Court of Appeals for the 2d Circuit clearly went beyond the doctrine in the *Pottorff*, *Sneeden* and *Lewis* cases in holding that authority to pledge assets could be derived from a territorial enactment which Congress had continued in force in the Philippine Islands. In this aspect, we think it is clear the decision in the *Berger* case is erroneous,

since there was no Act of Congress which specifically authorized the securing of the deposits of the Government of the Philippine Islands.

However, the *Berger* case is distinguishable from the instant case. In the *Berger* case, Congress had authorized the Philippine Commission to enact laws respecting the government of the Philippine Islands, and incident thereto, the Philippine Commission specifically enacted that the Secretary of War of the United States might designate banking institutions in the United States as depositaries of the government of the Philippine Islands and to exact bonds from said banks as security for the repayment of Philippine deposits.

This enactment remained in full force and effect until 1916, when the third Philippine Legislature adopted a similar provision of designation of depositaries and the requirement of the exaction of security for deposits made thereunder, and this provision was subsequently included in Section 625 of the Philippine Administrative Code of 1917.

The Court held that the delegation of power by Congress, coupled with the express legislative acts, and the subsequent congressional enactment known as the Autonomy Act of 1916, which provided that "the laws in force in the Philippines on August 29, 1916, shall continue in force and effect, except as altered, amended, or modified by this chapter, until altered, amended, or repealed by the legislative authority provided by this chapter or by Acts of Congress of the United States," constituted authorization and validity of the pledge to secure Philippine Island deposits.

In the instant case, there is neither a specific regulation authorizing or requiring the exaction of security, nor is there an Act of Congress in existence which may be said to ratify any such attempted regulation.

II.

THE TRIAL COURT HAD JURISDICTION.

Before discussing the doctrine of sovereign immunity to suit of the United States and whether such doctrine applies here, it will clarify the issue to show the legal status of the fund sought to be recovered.

A. The attempted pledge of the bank's assets to secure Canal Zone deposits in the absence of express statutory authority was void, and no title to said assets passed thereby to the intended pledgee.

It has been demonstrated under Point I that (1) national banks derive their powers from Congress and powers not granted are denied; (2) that authority to pledge their assets must be by specific Act of Congress; (3) that no Act of Congress authorized the bank to effect the pledge or required the depositing officer to exact it; (4) that no general or incidental power is vested in national banks to pledge their assets to secure government or other deposits, and that each Act of Congress authorizing or requiring such pledges has by its terms been expressly limited to the deposits therein described.

It is now definitely settled that unauthorized pledges by national banks are illegal and void because *ultra vires,* and that the intended pledgees acquired no title or right in the securities, which always remain assets of the bank. These principles are clearly enunciated in the following cases:

Central Transportation Company v. *Pullman's Palace Car,* 139 U. S. 24;
Texas & Pacific Ry. Co. v. *Pottorff,* 291 U. S. 245;
LaParr v. *City of Rockford* (C. C. A. 7), 100 Fed. (2d) 564, 569, cert. den. May 1, 1939;
Hood v. *Hardesty,* (C. C. A. 4), 94 F. (2d) 26, 29, cert. den. 301 U. S. 361;
Redfield Independent School District v. *Schnetzer,* (C. C. A. 8), 94 F. (2d) 257, 258;

City of Ft. Worth v. *McCamey,* (C. C. A. 5), 93 F. (2d) 964, 967, cert. den. 304 U. S. 571;
Queenan v. *Mays,* (C. C. A. 10), 90 F. (2d) 525, 533, cert. den. 302 U. S. 724;
Leonard v. *Gage,* (C. C. A. 4), 94 F. (2d) 19, 23, 24, cert. den. 303 U. S. 653;
City of Chicago v. *Joseph* (C. C. A. 7), 95 F. (2d) 444, 446, 447, cert. den. 304 U. S. 578;
The Illinois Central Ry. Co. v. *Rawlings* (C. C. A. 5), 66 F. (2d) 146, cert. den. 291 U. S. 668;
Baltimore and Ohio Ry. Co. v. *Smith* (C. C. A. 3), 56 F. (2d) 799.
Downey v. *City of Yonkers* (C. C. A. 2) Aug 3, 1939.

This Court in *Texas & Pacific Ry. Co.* v. *Pottorff, supra,* on these questions said (at p. 260):

> "It is the settled doctrine of this Court that no rights arise on an *ultra vires* contract, even though the contract has been performed; and that this conclusion cannot be circumvented by erecting an estoppel which would prevent challenging the legality of a power exercised. *California Bank* v. *Kennedy,* 167 U. S. 362; *McCormick* v. *Market Bank,* 165 U. S. 538; *Central Transportation Co.* v. *Pullman Co.,* 139 U. S. 24."

The *Pottorff* case related to the powers of a national bank, and on the principles of law involved, this Court cited with approval the case of *Central Transportation Co.* v. *Pullman Co., supra,* which laid down the fundamental doctrine here contended for by the respondents (at pp. 59 and 60):

> "A contract of a corporation, which is *ultra vires,* in the proper sense, that is to say, outside the object of its creation as defined in the law of its organization, and therefore beyond the powers conferred upon it by the legislature, *is not voidable only, but wholly void, and of no legal effect.* The objection to the contract is, not merely that the corporation ought not to have made it, but that it could not make it. The contract cannot be ratified by either party, because it could not have been authorized by either. *No performance on either*

side can give the unlawful contract any validity, or be the foundation of any right of action upon it." (Italics supplied.)

The doctrine is well illustrated in the decision of *Illinois Central R. R. Co.* v. *Rawlings* (C. C. A. 5), 66 F. (2d) 146, cert. den. 291 U. S. 668, wherein that Court, considering the nature of an *ultra vires* pledge, stated (at page 149):

"* * * By the Pottorff Case it was meant to decide, and it was decided, that such an arrangement, looking to creating, in the event of insolvency, preferences among general depositors, was fundamentally invalid; that no rights could be predicated on it, or on the physical possession of the pledged bonds acquired by virtue of it. * * *"

So, in *Baltimore and Ohio Ry. Co.* v. *Smith, supra,* in referring to an attempted pledge of a national bank's assets to secure a deposit, the Court said, at page 802:

"Such a contract is not only voidable but wholly void and of no legal effect."

The Circuit Court of Appeals for the 7th Circuit reached the same conclusion in *City of Chicago* v. *Joseph, supra,* wherein it was stated (at page 446):

"If we are permitted to accept the averment that the securities were those of the bank and that defendant was so advised, the pledge was invalid, and, as we said, in the last mentioned case, 'being void the transaction could not be confirmed, ratified, enforced or rendered enforceable by the application of any doctrine of estoppel or otherwise. (Citing cases) This is because, not merely that the bank ought not to make the contract, but that it could not legally make it. Ratification is impossible if there is no power to contract. (Citing cases) And knowledge of the lack of existence of authority is conclusively presumed.'"

In *LaParr* v. *City of Rockford, supra,* where it was shown no statutory authority exists for the pledge, the Court held (at p. 567):

> "It follows, therefore, that the pledge of the assets was illegal. * * * All of the parties assumed that the pledge was valid. Their assumption was incorrect, but that it was erroneous was not authoritatively established by the Supreme Court until after the payment of the deposit to the city. Immaterial, however, is the motive that inspired the parties, for, under the law, the pledge was invalid, and no act of the bank, the receiver or the comptroller could validate it."

B. An unauthorized pledge of a national bank's assets being void, the Receiver is entitled to recover the pledged property or the proceeds thereof.

The point directly involved in *Marion* v. *Sneeden, supra,* was whether bonds having been delivered under the void pledge agreement, the Receiver could recover them. This Court decided the Receiver could recover the bonds.

The same rule applies to the proceeds of the bonds if they have been sold. The rule was well stated in *Leonard* v. *Gage, supra,* (cert. denied) where it was stated (at p. 24):

> "And we think it clear that the proceeds of the collateral applied in extinguishment of the deposit accounts can be recovered for another reason. To permit the receivers of the failed national bank to thus apply their assets on unsecured claims would be to sanction the violation of the statutes forbidding preferences and requiring the equal and ratable distribution of the assets. See 12 U. S. C. A., sections 91, 194; Illinois Cent. R. Co. v. Rawlings, 5 Cir., 66 F. 2d 146, 149; Adams v. Cribbis, D. C. 17 F. Supp. 723."

Hood v. *Hardesty,* 94 F. (2d) 26 (cert. den. 301 U. S. 361) was a suit to recover the proceeds of bonds which had been sold, such bonds having been pledged by a national bank to secure what the court found was a void

pledge. The Court in an opinion by Parker, J. said (at p. 29):

> "On the second question, the position of defendant is that there was a voluntary payment of defendant's deposit under mistake of law, and that payment so made cannot be recovered. There are two answers to this; first that the receiver of a national bank is an administrative officer of the United States and is not bound by the rule precluding the recovery of money voluntarily paid under mistake of law; second, that to permit the assets of the failed national bank to be thus applied in extinguishment of unsecured claims for deposits would contravene the federal statutes forbidding preferences to creditors and requiring the equal and ratable distribution of assets. 12 U. S. C. secs. 91 and 194. This matter has been fully discussed in the case of Leonard et al. v. Gage & Elliott, 4 Cir., 94 F. 2d 19, this day decided, and what is there said need not be here repeated."

The Receiver may recover, even though he has consented to the sale of the pledged property with the express approval of the Comptroller of the Currency, *LaParr* v. *City of Rockford, supra; O'Connor* v. *Rhodes,* 79 F. (2d) 146, 153; or even with the express approval of the Court, *Redfield Independent School District* v. *Schnetzer, supra,* and notwithstanding the fact that when the pledge was made, the Comptroller of the Currency ruled that it was valid, *Leonard* v. *Gage, supra.*

C. The fund sought to be recovered has not been covered into the Treasury of the United States, is not part of the revenue of the United States, and is not public money of the United States.

A clear distinction should be made between the money originally deposited through the Secretary of War in the District National Bank on the one hand, and on the other, the fund now sought to be recovered by respondent.

The questions of what official made the original deposits in the District National Bank, whether or not those deposits were public moneys of the United States, and the related questions discussed in Part I of this brief, all have to do with the problem of whether the pledge itself was valid. An entirely separate question is presented with respect to the fund now sought to be recovered by respondent.

It is admitted by petitioner (R. 13) that the fund sought to be recovered represents the proceeds of the bonds formerly belonging to the District National Bank and pledged to secure the deposit in the bank.

It follows, as shown just above, that if the pledge was, as respondent contends, "wholly void and of no legal effect" (*Central Transportation Company* v. *Pullman's Palace Car,* 139 U. S. 24), then no title to such fund passed to the Secretary of War by the transfer of such fund to him because such a void contract cannot "be the foundation of any right of action upon it." (*Central Transportation Co.* v. *Pullman's Palace Car, supra.*)

This distinction is well illustrated in *O'Connor* v. *Rhodes, supra,* where the Court of Appeals, after first discussing the fund composed of deposits made by the Alien Property Custodian in the Commercial National Bank of Washington, differentiated between such deposits, and the proceeds of the bank's bonds pledged to secure the original deposits by saying (at p. 152):

> "On the other hand, the excess which the bill charges the Alien Property Custodian received over and above other general creditors of the bank was a part of the trust assets of the insolvent bank. *It was, therefore, money of the bank* out of which all creditors were entitled to be paid ratably. If it was improvidently paid to the Custodian, it is recoverable, * * * and the resort to equity for protection is not to be defeated upon the ground that the suit is one against the United States." (Emphasis supplied.)

(The contrary result with respect to the same fund was reached in *Cummings* v. *Hardee,* 102 F. (2d) 622, but upon the ground that the money had been covered into the U. S. Treasury.)

In this case involving the District National Bank, the pledged bonds were sold and the proceeds admittedly deposited in the Hamilton National Bank of Washington.

It is not even contended by petitioners that the fund sought here to be recovered has been covered into the Treasury of the United States.

Inasmuch, therefore, as this action is brought to recover the assets of the bank, and since the United States has not obtained any interest in such assets, neither the United States nor the Panama Canal is an indispensable party to this action. This conclusion is predicated upon a careful consideration of this question by this Court in the following cases:

U. S. v. *Lee,* 106 U. S. 196, 213, 215;
Osborn v. Bank of the United States, 9 Wheat. 738;
Tindal v. *Wesley,* 167 U. S. 204, 223;
Philadelphia Co. v. *Stimson,* 223 U. S. 605, 619;
Ex parte Ayers, 123 U. S. 443, 500;
Allen v. *B. & O. Ry. Co.,* 114 U. S. 311, 315;
Poindexter v. *Greenhow,* 114 U. S. 270, 288, 289;
Scott v. *Donald,* 165 U. S. 58, 70;
Ickes v. *Fox,* 300 U. S. 82, 87, 88;
U. S. v. *Peters,* 5 Cranch (9) 115, 139, 140.

Respondent contends that the purported pledge of the bank's assets to the Secretary of War was *ultra vires* and void and passed no interest in the securities to the intended pledgee and since the intended pledgee acquired no right or interest in the bank's pledged bonds, or the proceeds thereof, neither the United States nor the Canal Zone is an indispensable party herein.

Petitioners' defense to this phase of the argument is predicated upon the asserted interest of the United States in the proceeds of the pledged bonds and they contend that

the mere assertion of this interest is sufficient to preclude this Court from examining the merits of the case.

It is clear that to preclude this Court's jurisdiction and to cause the action to be dismissed as one really against the sovereign, the petitioners must show affirmatively that the United States has some valid interest (as distinguished from a mere assertion of interest) in the property and unless they can make good their assertion of valid interest in the United States, respondent is entitled to recover his property unlawfully held by these petitioners.

In *Osborn, et al.* v. *Bank of the United States, supra,* in which Osborn, the Auditor of the State of Ohio, acting pursuant to the State statute obtained and delivered to his successor in office $100,000. from the Bank of the United States as the amount of a tax assessed by the State, the defendants urged that they held the money solely as officers of the State of Ohio, the owner thereof, and that "the court ought not to proceed without making the state a party," and if that could not be done, that the court should not take jurisdiction of the cause (p. 846). Chief Justice Marshall overruled the objection in the following language (at p. 846):

> "The full pressure of this argument is felt and the difficulties it presents are acknowledged. The direct interest of the State in the suit, as brought, is admitted; and, had it been in the power of the bank to make it a party, perhaps no decree ought to have been pronounced in the cause, until the State was before the court. But this was not in the power of the bank. * * * "

The Chief Justice in holding further that, inasmuch as the statute of Ohio was unconstitutional and void, *no party could obtain any right thereunder, and relief should be given in the case without making the State of Ohio a party,* said (pp. 858-9):

> "But, it has been shown, we think, that an action of detinue might be maintained for that article, if

the bank has possessed the means of describing it, and that the interest of the State would not have been an obstacle to the suit of the bank against the individual in possession of it. The judgment in such a suit might have been enforced, had the article been found in possession of the individual defendant. It has been shown that the danger of its being parted with, of its being lost to the plaintiff, and the necessity of a discovery, justified the application to a court of equity. It was in a court of equity alone that the relief would be real, substantial and effective.

"It was proper then, to make a decree against the defendants in the Circuit Court, if the law of the State of Ohio be repugnant to the constitution, or to a law of the United States made in pursuance thereof, so as to furnish no authority *to those who took, or to those who received, the money for which this suit was instituted.*" (Emphasis supplied.)

It is said by petitioners here (petitioners' brief, footnote, p. 45) that the *Osborn* case has since been modified, but the fact is that the only part modified was the holding that the fact that the United States was not a party to the record was a sufficient ground for holding the suit could proceed without it. The basic principle permitting recovery has not been modified.

The decision of Chief Justice Marshall in *Osborn* v. *Bank of the United States, supra,* and the principles enunciated in that case have been reaffirmed by the Supreme Court of the United States in subsequent cases.

In *Scott* v. *Donald,* 165 U. S. 58, 67-70, this Court held:

"A preliminary question is raised by the proposition that these are in fact suits against the State of South Carolina, and forbidden by the Eleventh Amendment. This question is sufficiently disposed of by referring to the late case of *Re Tyler,* 149 U. S. 164 (37:689), where the conclusion of numerous previous cases was stated to be that where a suit is brought against defendants who claim to act as officers of a State, and, under color of an unconstitutional statute, commit acts of wrong

and injury to the property of the plaintiff, *to recover money or property in their hands unlawfully taken by them* in behalf of the State, or for compensation for damages, such suit is not within the meaning of the amendment, an action against the State." (Emphasis supplied.)

In *United States* v. *Lee, supra,* this Court in holding that a plea of sovereign immunity on behalf of the United States was not well taken, and that the United States was not an indispensable party, said (at p. 210):

"The case before us is a suit against Strong and Kaufman as individuals, to recover possession of property. The suggestion was made that it was the property of the United States, and that the court, without inquiring into the truth of this suggestion, should proceed no further; and in this case, as in that, after a judicial inquiry had made it clear that the property belonged to plaintiff, and not to the United States, we are still asked to forbid the court below to proceed further; and to reverse and set aside what it has done, and thus refuse to perform the duty of deciding suits properly brought before us by citizens of the United States."

D. The doctrine of sovereign immunity does not apply.

Before proceeding with the broad aspects of this question, it will be helpful to mention certain analogies between the form of the action here and the form of the action involved in *Osborn, et al.* v. *The Bank of the United States,* 9 Wheat. 738. The *Osborn* case was in the form of a bill in equity. Although the State of Ohio was claimed by defendants to be the real party in interest, the State was not named as a defendant. That the State claimed an interest in the money was admitted, but it was asserted that such claim was not valid. The chief prayer of the bill of complaint was that a fund of money be restored to plaintiff who claimed he was the real owner. Among the defendants was one Sullivan, who had played no part in obtaining the money, but who only held it as a successor to a former trea-

surer. Sullivan at the time of the suit was Treasurer of the State of Ohio. He had no personal interest in the fund. *If possession of personal property constitutes title, then Sullivan, Treasurer of the State of Ohio, had title.* The bill prayed that the former Treasurer Curry, the then Treasurer Sullivan and Osborn, The Collector of Taxes, "in their official and private characters," may be made defendants; "that they may make discovery and may be enjoined from using or paying away the coin or notes taken from the bank, *may be decreed to restore the same,* and may be enjoined from proceeding further under the said act." The answer of Sullivan averred that the money "has remained in his hands as treasurer, and not otherwise." The trial court pronounced a decree directing the defendants to restore to the bank the sum of $100,000. with interest on $18,830., the amount in the hands of Sullivan. The Supreme Court affirmed the decree, except as to the provision for interest, as to which it reversed.

The present suit is in the form of a bill in equity. The petitioners are sued both in their individual and official capacities (R. 2). The United States is not made a party defendant. The chief purpose of the suit is to recover proceeds of bonds constituting assets of the bank and illegally pledged, which were received by petitioners' predecessors in office illegally and under a mistake of law, and now held by and under the control of petitioners. The chief prayer is that the petitioners be required to account to respondent for the sum in question less dividends paid to general creditors, with interest. The answers of petitioners averred that they did not hold the moneys in question personally but in their official capacities. The judgment of the trial court, which in form was consented to by petitioners, was for the payment of the fund in question to respondent, less dividends paid to other general creditors, plus interest.

Petitioners seek to distinguish the *Osborn* case upon the ground that the predecessor of the state treasurer, Sullivan, had obtained the money in violation of a court in-

junction. That point, however, went to the legality of the holding of the predecessor state official. It remained true that the successor treasurer, Sullivan, actually had possession of the property and held it solely in his capacity as a state official and that the State asserted that his possession was legal. Petitioners' position is that the mere holding of a fund by an official under a claim of right and under an asserted interest of the State in the fund is sufficient to make the State an indispensable party and to permit the invocation of the doctrine of sovereign immunity. In the *Osborn* case, this Court held to the contrary.

Petitioners in discussing the various cases on this subject seek to set up distinctions between cases against public officers in which suit will lie and others in which suit will not lie. One of the chief distinctions thus sought to be made by petitioners is the question of whether the property sought to be recovered is in the possession of the official who originally obtained it, or in the possession of a successor in office. It is submitted that this distinction is not a sound one. In this connection, there are several points of importance in *United States* v. *Lee, supra.*

Frederick Kaufman and Richard P. Strong, the only remaining defendants in the *Lee* case when it reached this Court, were sued individually but they had no personal interest in the outcome of the suit and were sued only because they were in possession of the property. Kaufman was the superintendant employed by the Secretary of War to take charge of what is now the Arlington National Cemetery, and Strong was a United States Army officer, also acting under instructions of the Secretary of War, who was in possession of the remainder of the property. Further, the record on appeal in the *Lee* case shows that at the time the suit was brought, the property in question had been in the possession of the United States through its officers *"for more than ten years,"* 106 U. S. 198. While it does not appear affirmatively that other officers had not been in possession previously, such conclusion may be reasonably, if not conclusively, inferred. In any event, Kaufman and Strong

were not sued as the persons who had obtained possession of the property originally; they were sued as the officers of the government who were in possession when the suit was brought.

Furthermore, the record on appeal contains the text of a "tax sale certificate" signed by President Abraham Lincoln and bearing the notation that it had been recorded in the appropriate county in Virginia.[14] The effect of such tax sale certificate was unquestionably that at the time the suit was filed, at least a bare legal title to the property in question rested in the government of the United States. Such certificate was to be taken as *prima facie* evidence of the regularity and validity of the sale, and "of the title of the said purchaser or purchasers under the same." 106 U. S. 200. It results that while, as stressed so strongly by petitioners, the *Lee* case was in form an action in ejectment to oust Kaufman and Strong from possession, the result of the suit was to take the title of the property from the United States Government.

The next distinction sought to be made by petitioners relates to the form of the action. Petitioners in particular stress that this suit was brought in equity and seek to impress a constructive trust upon the property involved. Upon this basis chiefly, they seek to distinguish *United States* v. *Lee, supra,* on the ground that the *Lee* case was an action at law in the form of a suit in ejectment.

Even in its strict sense, the action of ejectment is a possessory one, *Cincinnati* v. *White,* 6 Pet. 431, 441, 442. The issue in a suit of ejectment, however, may rest either upon the question of possession alone or upon the question of title, *Smith* v. *McCann,* 24 How. 398, or upon both, subject of course, to statutory modifications. The original common law action of ejectment has been very largely changed by statute and in some states the statutes have merely abolished fictitious proceedings leaving the action in other respects as at common law, *Miles* v. *Caldwell,* 2 Wall. 35.

[14] This certificate is printed in full at pages 67-70 of the separately printed appendix to this brief.

Stanley v. *Schwalby*, 162 U. S. 258, was an action of trespass, but that was solely because (p. 271) under the laws of Texas, a judgment for the plaintiff in an action of trespass was not restricted to possession but might be for title also. In other words, at that time in Texas, the action of trespass was the equivalent of an action in other jurisdictions to quiet title. Even more important, the Texas statute involved provided (p. 271) that the judgment in such an action "shall be *conclusive as to the title* or right of possession established in such action, upon the party against whom it is recovered. * * * " It was upon the basis of that provision of that statute alone that this Court held the State to be an indispensable party.

But the technical distinctions between an action at law of ejectment and for example, an action in equity to quiet title, are not here important, because, as stated by this Court in the *Lee* case, the United States would not be precluded by a final judgment, but if it felt itself aggrieved, could bring an action. On this point in the *Lee* case, this Court said (at p. 222):

> "Hence, taking the present case as an illustration, the United States may proceed by a bill in chancery, to quiet its title, in aid of which, if a proper case is made, a writ of injunction may be obtained. *Or it may bring an action of ejectment, in which, on a direct issue between the United States as plaintiff and the present plaintiff as defendant, the title of the United States may be judicially determined.* Or, if satisfied that its title has been shown to be invalid, and it still desires to use the property or any part of it, for the purposes to which it is now devoted, it may purchase such property by fair negotiation, or condemn it by a judicial proceeding, in which a just compensation shall be ascertained and paid, according to the Constitution." (Emphasis supplied.)

As a result of the *Lee* case, the United States chose the of the last mentioned alternatives. The trial court rded possession to the property to the plaintiff Lee

and ousted the defendants, officers and agents of the United States, from possession. But in doing so, the Court distinctly passed upon the question of title, found title of plaintiff to be good and that of the United States to be bad.

It follows that while in form the action was merely one of ejectment, nevertheless the question of the validity of the title of the United States was expressly decided by this Court. The United States then proceeded to purchase the property by negotiation.

In *Keifer & Keifer* v. *Reconstruction Finance Corporation*, 306 U. S. 381, objection was made that an agency of the United States (Regional Agricultural Credit Corporation) could not be sued "in tort," because suits against the United States sounding in tort were not authorized in the Court of Claims Act. But this Court refused to entertain such a fictional defense, saying (at page 395):

> "To be sure, the common law fiction of waiving the tort and suing in assumpsit cannot be used as an evasion of the limited liability created by the Court of Claims Acts. (Citing cases) But where the wrong really derives from an undertaking, to stand on the undertaking and to disregard the tort is not to invoke a fictive agreement. It merely recognizes a choice of procedural vindications open to the injured party."

Such procedural distinctions are particularly inappropriate now since the Federal Rules of Civil Procedure promulgated by this Court abolished the previous distinctions between suits at law and actions in equity and under which, by Rule 86, such rules "govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the Court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies."

Furthermore, regardless of the technicalities of pleading, the same contentions made by petitioners in the instant case were also made by the United States officers in the *Lee* case as shown in the following statement of that case by the Court (at p. 204):

> "The counsel for plaintiffs in error and in behalf of the United States assert the proposition, that though it has been ascertained by the verdict of the jury, in which no error is found, *that the plaintiff has the title to the land in controversy, and that what is set up in behalf of the United States is no title at all, the court can render no judgment in favor of the plaintiff against the defendants in the action, because the latter hold the property as officers and agents of the United States, and it is appropriated to lawful public uses.*" (Emphasis supplied.)

Furthermore, it will be recalled that this Court in the *Lee* case said (at p. 208):

> "When he (a citizen), in one of the courts of competent jurisdiction, has established his right to property, there is no reason why deference to any person, natural or artificial, not even the United States, should prevent him from using the means which the law gives him, for the protection and enforcement of that right."

E. The doctrine of sovereign immunity.

The immunity from suit of the States (involved in the *Osborn* case and numerous of the cases cited by petitioners) being derived from the Constitution itself, that immunity may be broader than that of the United States because the latter, being "derived by implication," has been modified both by enactment and judicial construction.

That there exists a tendency in the American government towards "confining" the doctrine of the immunity of the United States from suit has been most recently emphasized in *Keifer & Keifer* v. *Reconstruction Finance*

Corporation, supra, wherein this Court said (at pages 388, 389):

> "The starting point of inquiry is the immunity from unconsented suit of the government itself. As to the states, legal irresponsibility was written into the Eleventh Amendment; as to the United States, it is derived by implication. Monaco v. Mississippi, 292 U. S. 313, 321. For present purposes it is academic to consider whether this exceptional freedom from legal responsibility rests on the theory that the United States is deemed the institutional descendant of the Crown, enjoying its immunity but not its historic prerogatives, cf. Langford v. United States, 101 U. S. 341, 343, or on a metaphysical doctrine 'that there can be no legal right as against the authority that makes the law on which the right depends.' Kawananakoa v. Polyblank, 205 U. S. 349, 353. But because the doctrine gives the government a privileged position, it has been appropriately confined.
>
> "Therefore, the government does not become the conduit of its immunity in suits against its agents or instrumentalities merely because they do its work. United States v. Lee, 106 U. S. 196, 213, 221, Sloan Shipyards Corp. v. Fleet Corp., 258 U. S. 549, 567."

Many general classifications distinguishing between the class of cases where jurisdiction has been sustained and other classes where the suit has been dismissed on the ground of sovereign immunity appear in the opinions of this Court. The one most frequently quoted was contained in *Pennoyer* v. *McConnaughy,* 140 U. S. 1, 10:

> "The first class is where the suit is brought against the officers of the State, as representing the State's action and liability, thus making it, though not a party to the record, the real party against which the judgment will so operate as to compel it to specifically perform its contracts. *Re Ayers,* 123 U. S. 443; *Louisiana* v. *Jumel,* 107 U. S. 711; *Antoni* v. *Greenhow,* 107 U. S.

769; *Cunningham* v. *Macon & B. R. Co.*, 109 U. S. 446, *Hagood* v. *Southern*, 117 U. S. 52.

"The other class is where a suit is brought against defendants who, claiming to act as officers of the State, and under the color of an unconstitutional statute, commit acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the State. Such suit, whether *brought to recover money or property in the hands of such defendants*, unlawfully taken by them in behalf of the State, or for compensation in damages, or, in a proper case where the remedy "at law is inadequate, for an injunction to prevent such wrong and injury, or for a mandamus, in a like case, to enforce upon the defendant the performance of a plain legal duty, purely ministerial, is not within the meaning of the Eleventh Amendment an action against the State. *Osborn* v. *Bank of United States*, 9 Wheat, 738; *Davis* v. *Gray*, 16 Wall. 203; *Tomlinson* v. *Branch*, 15 Wall. 460; *Litchfield* v. *Webster County*, 101 U. S. 773; *Allen* v. *Baltimore & O. R. Co.*, 114 U. S. 311; *Louisiana Board of Liquidation* v. *McComb*, 92 U. S. 531; *Poindexter* v. *Greenhow*, 114 U. S. 270." (Emphasis supplied.)

Such classifications, however, like efforts to reduce to rules of thumb such broad subjects of judicial review as the separation of powers, the delegation of power and the limits of the Federal Government under the Commerce Clause and of the police power of the States are not fixed nor rigid, and always must take into account the facts of the case and current congressional policy.

It becomes important, then, to seek a classification going to the heart of the problem rather than to non-essentials. The classification of the limits of the effective application of the doctrine of soverign immunity, which seems to have been uniformly followed subsequently, is contained in the following statement by this Court in *United States* v. *Lee, supra*, (at p. 207):

"On the other hand, while acceding to the general proposition that in no court can the United States be

sued directly by original process as a defendant, there is abundant evidence in the decisions of this court that the doctrine, if not absolutely limited to cases in which the United States are made defendants by name, is not permitted to interfere with the judicial enforcement of the established rights of plaintiffs, when the United States is not a defendant or *a necessary party to the suit.*" (Emphasis supplied.)

Fundamentally, in seeking to apply general rules as to necessary parties to the case at bar, the chief reliance of petitioners is upon the contention that since individuals made deposits with the Panama Canal government through purchasing money orders, since the *original deposits* in the bank consisted of money order funds and since the United States government is at least morally obligated to pay such money orders, therefore, the interests of the United States are directly involved and hence, it is an indispensable party to this suit.

But is this contention sound?

It might be sound if there were involved here the original deposits made in the District National bank.

But the fund involved here stands in an entirely different category. As shown above, this fund is derived solely from the bonds of the District National bank illegally pledged as collateral to the original deposit. If the pledge was illegal and absolutely void, and, as this Court held in *Pullman's Palace Car Company* case, such a void pledge vests no right or interest in the pledgee, then it follows that neither the United States Government nor anyone else obtained any right or interest in the pledged securities or the proceeds thereof. If the United States obtained no interest, then it is not an indispensable party.

The essential point of the case at bar is that it is a suit to recover possession of proceeds of pledged assets which unquestionably belonged to the District National bank, and which the predecessors of petitioners obtained wrongfully (in a legal sense) and which petitioners are wrongfully withholding.

The wrongful nature of the taking and withholding stems from the fact that the pledges were void and that petitioners and their predecessors took and now hold with imputed knowledge that the pledged bonds (and hence their proceeds) were owned by respondent for the benefit of the creditors (and stockholders, if the creditors are paid in full) of respondent's bank. In respondent's view of the matter, it makes no difference that such taking and withholding was altogether innocent.

In consequence of the narrowness of the issue thus presented, the only cases dealing with sovereign immunity and necessary parties are those cases which turn on the taking or withholding by government officers of another's property. Such cases decided by this Court are not numerous. The leading cases of *Osborn* v. *Bank of the United States,* and *Lee* v. *United States,* have already been discussed.

Cunningham v. *Macon and Brunswick Railroad Company, et al.,* 109 U. S. 446, did not fall within this category but a discussion by the Court, while probably *dictum,* is interesting and enlightening. At page 452, this Court said:

> "It has been held in a class of cases where property of the State, or property in which the State has an interest, comes before the court and under its control, in the regular course of judicial administration, without being forcibly taken from the possession of the government, the court will proceed to discharge its duty in regard to that property. And the State, if it choose to come in as plaintiff, as in prize cases, or to intervene in other cases when she may have a lien or other claim on the property, will be permitted to do so, but subject to the rule that her rights will receive the same consideration as any other party interested in the matter, and be subjected in like manner to the judgment of the court. Of this class are the cases of *The Siren,* 7 Wall. 157; *The Davis,* 10 Wall. 20, and *Clark* v. *Barnard, et al.,* 108 U. S. 436."

Further (at p. 452) the Court said:

> "Another class of cases is where an individual is sued in tort for some act injurious to another in regard

to person or property, to which his defense is that he has acted under the orders of the government.

"In these cases he is not sued as, or because he is, the officer of the government, but as an individual, and the court is not ousted of jurisdiction, because he *asserts* authority as such officer. To make out his defense he must show that his authority was sufficient in law to protect him. See, *Mitchell* v. *Harmony*, 13 How. 115; *Bates* v. *Clark*, 95 U. S. 204; *Meigs* v. *McClung*, 9 Cranch 11; *Wilcox* v. *Jackson*, 13 Pet. 498; *Brown* v. *Huger*, 21 How. 305; *Grisar* v. *McDowell*, 6 Wall. 363.

"To this class belongs also the recent case of *U. S.* v. *Lee*, 106 U. S. 196, for the action of ejectment in that case is, in its essential character, an action of trespass, with the power in the court to restore the possession to the plaintiff as part of the judgment. And the defendants, Strong and Kaufman, being sued individually as trespassers, set up their authority as officers of the United States, which this court held to be unlawful and, therefore, insufficient as a defense. The judgment in that case did not conclude the United States, as the opinion carefully stated, but held the officers liable as unauthorized trespassers, and turned them out of their unlawful possession."

The Governor of Georgia v. *Sundry African Slaves, Madrazo, claimant*, 1 Pet. 110, involved an effort to regain property claimed to have been wrongfully seized by the State of Georgia, but in its essentials the decision turned upon the point that the money sought to be recovered had actually been covered into the State Treasury and it was largely upon this ground that the Court held it to be in effect a suit against the State.

Louisiana v. *Jumel*, 107 U. S. 711, was totally different in nature from the suit at bar. It did not involve the attempted recovery of a fund and in addition, the money involved had actually been put into the State Treasury.

Poindexter v. *Greenhow, Treasurer*, 114 U. S. 270, was more directly in point. The action was one of detinue for personal property against the agent of the State upon the ground that the defendant in illegally seizing property had

acted as a wrongdoer and, therefore, could be sued in detinue. This Court ordered delivery of personal property to plaintiff from the Agent of the State. Basing the decision largely upon *U. S.* v. *Lee* and *Osborn* v. *Bank*, the Court held that the suit was not one against the State and said (at p. 282):

> "The case, then, of the plaintiff below is reduced to this: He had paid the taxes demanded of him by a lawful tender. The defendant had no authority of law thereafter to attempt to enforce other payment by seizing his property. In doing so, he ceased to be an officer of the law and became a private wrongdoer. It is the simple case in which the defendant, a natural private person, has unlawfully, with force and arms, seized, taken and detained the personal property of another. That an action of detinue will lie in such a case, according to the law of Virginia, has not been questioned. The right of recovery would seem to be complete, unless this case can be met and overthrown on some of the grounds maintained in argument by counsel for the defendant in error."

Discussing the question of sovereign immunity and necessary parties, the Court said (at p. 288):

> "The *ratio decidendi* in this class of cases is very plain. A defendant sued as a wrongdoer, who seeks to substitute the State in his place, or to justify by the authority of the State, or to defend on the ground that the State has adopted his act and exonerated him, cannot rest on the bare assertion of his defense. He is bound to establish it. The State is a political corporate body, can act only through agents, and can command only by laws. It is necessary, therefore, for such a defendant, in order to complete his defense, to produce a law of the State which constitutes his commission as its agent, and a warrant for his act. This the defendant in the present case undertook to do. He relied on the Act of January 26, 1882, requiring him to collect taxes in gold, silver, United States treasury notes, national bank currency, and nothing else, and thus forbidding his receipt of coupons in lieu of money. That, it is true,

is a legislative Act of the government of Virginia, but it is not a law of the State of Virginia. The State has passed no such law, for it cannot; and what it cannot do, it certainly, in contemplation of law, has not done. The Constitution of the United States and its own contract, both irrepealable by any act on its part, are the law of Virginia; and that law made it the duty of the defendant to receive the coupons tendered in payment of taxes, and declared every step to enforce the tax, thereafter taken, *to be without warrant of law, and therefore a wrong.* He stands, then, stripped of his official character, and, confessing a personal violation of the plaintiff's rights, for which he must personally answer, he is without defense." (Emphasis supplied.)

Discussing the nature of the action, the Court said (at p. 295):

"Although the plaintiff below was nominally the actor, the action itself is purely defensive. Its object is merely to resist an attempted wrong and to restore the *status in quo* as it was when the right to be vindicated was invaded. In this respect it is upon the same footing with the preventive remedy of injunction in equity, when that jurisdiction is invoked, and of which a conspicuous example, constantly followed in the courts of the United States, was the case of *Osborn* v. *Bank of U. S., ubi supra.*"

Smith v. *Reeves*, 178 U. S. 436, was the usual type of suit to recover taxes claimed to have been illegally collected. It being held that the money in question had been covered into the Treasury of the State of California, the Court held that in reality it was a suit against the State. As *dictum* the Court added (at p. 439):

"This case is unlike those in which we have held that a suit would lie by one person against another person to recover possession of specific property, although the latter claimed that he was in possession as an officer of the state and not otherwise. In such a case, the settled doctrine of this court is that the question of possession does not cease to be a judicial question—as between the

parties actually before the court—because the defendant asserts or suggests that the right of possession is in the state of which he is an officer or agent. *Tindal* v. *Wesley*, 167 U. S. 204, 221, and authorities there cited."

Tindal v. *Wesley*, 167 U. S. 204, directly involved an attempt to recover property, together with damages for withholding possession. It was brought against the Secretary of State of South Carolina, and an employee of the State in actual possession. The defendants answered and averred that they had no personal interest in the property, that they held in their official capacity only, and that title and right to possession was in the State and that consequently the court had no jurisdiction. The Court said (at p. 221):

"The adjudged cases in principle determine the one before us. The settled doctrine of this court wholly precludes the idea that a suit against individuals to recover possession of real property is a suit against the state simply because the defendant holding possession happens to be an officer of the state and asserts that he is lawfully in possession on its behalf. We may repeat here what was said by Chief Justice Marshall, delivering the unanimous judgment of this court in *United States* v. *Peters*, 5 Cranch, 115, 139: 'It certainly can never be alleged that a mere suggestion of title in a state to property, in possession of an individual, must arrest the proceedings of the court, and prevent their looking into the suggestion, and examining the validity of the title.' Whether the one or the other party is entitled in law to possession is a judicial, not an executive or legislative, question. It does not cease to be a judicial question because the defendant claims that the right of possession is in the government of which he is an officer of agent."

Further, at p. 222, Court said:

"If a suit against officers of a state to enjoin them from enforcing an unconstitutional statute, whereby the plaintiff's property will be injured, or to recover damages for taking under a void statute the property

of the citizen, be not one against the state, it is impossible to see how a suit against the same individuals to recover the possession of property belonging to the plaintiff and illegally withheld by the defendants can be deemed a suit against the state."

Chapman v. *County of Douglas*, 107 U. S. 348, involved an effort to recover land from the County of Douglas, Nebraska, and the Court said (at p. 355):

"As was said by this court in *Marsh* v. *Fulton Co.*, 10 Wall. 681, and repeated in *Louisiana* v. *Wood*, 102 U. S. 294, 'The obligation to do justice rests upon all persons, natural and artificial, and if a county obtains the money or property of others without authority, the law, independent of any statute, will compel restitution or compensation.'"

Petitioners seek to distinguish the case at bar from cases like *Marion* v. *Sneeden, supra*, first, upon the ground that here the pledged bonds were sold and second, upon the ground that this suit was brought in equity. The same contention was made in *Baldwin* v. *Chase National Bank of City of New York*, 16 F. Supp. 918 (reversed on other grounds in *Berger* v. *Chase National Bank* (C. C. A. 2d), decided July 24, 1939), and in that case, Knox, District Judge, said (at p. 922):

"The complete want of power to make the pledge carried with it an incapacity to authorize a sale by any one for the purpose of 'executing' the transaction. Nor could the act of the Secretary of War—an act which the bank was powerless to authorize—in attempting to execute the contract by selling the securities, create in him the authority he lacked. An abortive effort to make an agreement cannot transform the attempt into an accomplished fact.

"Transmutation of the bank's property from one type of chose in action, viz., bonds, to another type, viz., a bank deposit, did not operate to vest an interest in the intended pledgee; it was a brutum fulmen. Indeed, the withholding of the securities illegally obtained might well be considered a conversion."

7. The United States is not a necessary party to the suit because petitioners are unable to show that the United States has any legal interest in the property which is the subject matter of the suit. Since petitioners have control of respondent's funds in the Hamilton National Bank and since they have no legal interest in such property, they have a duty to return that property, and the Court may enforce such duty by its decree.

Fundamental to the cases in which this Court has held e sovereign not to be a necessary party has been the hold- g that the taking of the property involved was a void oceeding. Thus, in *Osborn* v. *Bank*, the taking was held d because the statute relied upon was void. The same uation existed in *Smith* v. *Reeves, supra*. Here, the void ng was the pledge contract between the bank and the retary of War. It seems obvious that no more rights s under a void contract than under a void statute. Such the holding of this Court in the *Pottorff* and *Sneeden* es, *supra*. It results that the taking and withholding er a void contract is just as illegal as under a void ute.

this sense, the instant case falls within the classifica- of cases defined in *Pennoyer* v. *McConnaughy, supra*, rein the United States was held not to be a necessary y, (140 U. S. 1, 10):

"The other class is where a suit is brought against lefendants who, claiming to act as officers of the State, nd under the color of an unconstitutional statute, ommit acts of wrong and injury to the rights and roperty of the plaintiff acquired under a contract ith the State. Such suit, whether brought to recover oney or property in the hands of such defendants, nlawfully taken by them in behalf of the State, or for mpensation in damages, or, in a proper case where e remedy at law is inadequate, for an injunction to revent such wrong and injury, or for a mandamus, a like case, to enforce upon the defendant the per-

formance of a plain legal duty, purely ministerial, is not within the meaning of the Eleventh Amendment an action against the State. *Osborn* v. *Bank of United States*, 9 Wheat. 738; *Davis* v. *Gray*, 16 Wall. 203; *Tomlinson* v. *Branch*, 15 Wall. 460; *Litchfield* v. *Webster County*, 101 U. S. 773; *Allen* v. *Baltimore & O. R. Co.*, 114 U. S. 311; *Louisiana Board of Liquidation* v. *McComb*, 92 U. S. 531; *Poindexter* v. *Greenhow*, 114 U. S. 270."

As already pointed out, this was also the precise situation existing in *Osborn* v. *Bank, supra*, which caused this Court to say (at p. 859):

> "It was proper then, to make a decree against the defendants in the Circuit Court, if the law of the State of Ohio be repugnant to the constitution, or to a law of the United States made in pursuance thereof, so as to furnish no authority to those who took, or to those who received, the money for which this suit was instituted."

Similarly, in this connection, there should be repeated, the following holding of this Court in *Poindexter* v. *Greenhow, supra* (at p. 295):

> "Although the plaintiff below was nominally the actor, the action itself is purely defensive. Its object is merely to resist an attempted wrong and to restore the *status in quo* as it was when the right to be vindicated was invaded. In this respect it is upon the same footing with the preventive remedy of injunction in equity, when that jurisdiction is invoked, and of which a conspicuous example, constantly followed in the courts of the United States, was the case of *Osborn* v. *Bank of U. S., ubi supra.*"

Petitioners here have control of the funds sought to be recovered. That petitioners have both possession and control of it, but no official interest in it, results from the discussion above. In a brief filed by the Department of Justice through its Assistant Attorney General,

102 F.(2d)622.

in *Cummings, as Alien Property Custodian of the United States* v. *Hardee*, #7127, in the United States Court of Appeals for the District of Columbia, it was claimed in that case that the money involved had actually been covered into the Treasury of the United States. Discussing the contrary situation (which exists here) the Assistant Attorney General said (at p. 17):

> "If the administrative fund were a cash fund legally deposited in a private bank to the unrestricted credit of the Attorney General, then obviously he would have both possession and control of it."

A similar result follows here and a distinction may not be made upon the ground that the original taking was by the Secretary of War, whereas the present holding is by another Secretary of War. A wrongful withholding is fundamentally the same as a wrongful taking, at least insofar as the right to recover the property is concerned.

It has never been considered, even in an action at law, that transfer of possession from the original wrongful taker to another would defeat recovery.

Similar principles apply with respect to trusts. Thus, Mr. Justice Holmes, when a member of the Supreme Judicial Court of Massachusetts, in *Otis* v. *Otis*, 167 Mass. 245, 45 N. E. 737, said:

> "* * * A person to whose hands a trust fund comes by conveyance from the original trustee is chargeable as a trustee in his turn if he takes it without consideration, whether he has notice of the trust or not. This has been settled for 300 years,—since the time of uses. 'If the feoffees enfeoff one without consideration it is to the first use although it be without notice.' Y. B. 14 Hen. VIII, p. 9, pl. 5; Chudleigh's Case, 1 Coke 120, 122b; *Mansell* v. *Mansell*, 2 P. Wms. 678, 681; *Clark* v. *Flint*, 23 Pick. 231, 243; *Atlantic Cotton Mills* v. *Indian Orchard Mills*, 147 Mass. 268, 272, 273, 17 N. E. 496; Lewin Trusts (9th Ed.) 976; 1 Perry, Trusts (4th Ed.) Secs. 217, 220."

This rule was stated as follows by this Court in *Chapman* v. *Douglas County Comrs.*, 107 U. S. 348, 357, 358:

> "The conveyance by Chapman to the County of Douglas passed the legal title, but upon a condition in the contract which it was impossible in law for the county to perform. There resulted, therefore, to the grantor the right to rescind the agreement upon which the deed was made, and thus to convert the county into a trustee, by construction of law, of the title for his benefit, according to the often repeated rule as stated by Hill on Trustees, 144, that 'Whenever the circumstances of a transaction are such that the person who takes the legal estate in property cannot also enjoy the beneficial interest, without necessarily violating some established principle of equity, the court will immediately raise a constructive trust and fasten it upon the conscience of the legal owner, so as to convert him into a trustee for the parties, who, in equity, are entitled to the beneficial enjoyment.' Upon this principle, the vendor of real estate is treated as trustee of the title for the purchaser; and the mortgagee, having the legal title, after payment of the mortgage debt, is a trustee for the mortgagor. The analogy is complete between these, and every case, of which the present is one, where the holder of the legal title is under a duty to convey to another."

Petitioners likewise refer to *Chapman* v. *Douglas County Commissioners*, and contend that it establishes that the creation of a constructive trust results in vesting legal title in the trustee. The fact is, however, that in said case legal title was conveyed by deed and therefore creation of the legal title did not result from the creation of the constructive trust; the contrary was the fact. The court held, in effect, as indicated by the foregoing quotation, that notwithstanding the formal passage of legal title, nevertheless, where the circumstances of a transaction were such that the person taking legal title could not also enjoy the beneficial interest without necessarily violating equity, the court would immediately raise a constructive trust and fasten it

upon the conscience of the legal owner so as to convert him into a trustee for the parties, who, in equity, were entitled to the beneficial enjoyment.

A vital distinction exists between the instant cases and cases such as *Murray* v. *Wilson Distilling Company*, 213 U. S. 151 and *Langford* v. *Platte Iron Works*, 235 U. S. 461, 472, 473, cited by petitioners. Those cases turned upon the fact that the fund in controversy was actually in the public treasury concerned.

It is a commonplace of the law that where one has control, custody, or mere possession of personal property, obtained under a mistake of fact or as a wrongdoer, he does not thereby get a good title. Possession is at best mere *prima facie* evidence of ownership. The reason is that possession may result from a bailment, or a trespass. *Miller Piano Co.* v. *Parker*, 155 Pa. 208, 26 Atl. 303; *In re Metallic Specialty Mfg. Co.*, 210 Fed. 663. It is likewise settled law that one who takes with notice or without consideration gets no more title than had his transferor.

Therefore, to contend, as do petitioners, that the transfer of possession and control of choses in action in the case at bar to Dern, Secretary of War, and by him without consideration to Woodring, Secretary of War, makes the United States an indispensable party, is to assume that the transfer vested a valid interest or title, which is an assumption not justified by law. *Pullman's Palace Car Co.* v. *Central Transportation Co., supra.*

In the cases cited by petitioners, or found by respondents, in which it was contended that the United States or the State was an indispensable party on the ground that title to the subject-matter was in the United States or the State, this Court has examined the facts and where it was found that valid title did not rest in the sovereign has held that the sovereign is not an indispensable party. *Osborn* v. *Bank of the United States, supra.*; *Cammeyer* v. *Newton*, 94 U. S. 225; *United States* v. *Lee, supra.*; *Tindal* v. *Wesley*, *supra.*; *Poindexter* v. *Greenhow, supra.*; *Ickes* v. *Fox, supra.*

The exceptions were cases where valid title was admitted to be in the sovereign, or it appeared from the face of the record that a valid title had at some previous time vested in the sovereign, (*Minnesota* v. *United States*, 305 U. S. 382; *Nagonab* v. *Hitchcock*, 202 U. S. 473; *Arizona* v. *California*, 298 U. S. 558; *State of Louisiana* v. *Garfield*, 211 U. S. 70; *New Mexico* v. *Lane*, 243 U. S. 52; *Oregon* v. *Hitchcock*, 202 U. S. 473). Such exceptions do not apply to the case at bar.

III.

THE ALLOWANCE OF INTEREST IN THE JUDGMENT BELOW.

Petitioners urge that the judgment should be reversed because of the allowance of interest to respondent. Even should this Court decide the Court below erred with respect to the allowance of interest, it could follow its course in Osborn v. Bank of the United States and reverse that part of the judgment only.

In this connection it would appear proper to advise the Court that no objection was made to the allowance of interest in the decree; the decree was consented to as to form; no assignment of error was made with respect to the allowance of interest; the point was neither briefed nor argued in the U. S. Court of Appeals for the District of Columbia; nor was it urged or relied upon in the petition for *certiorari*.

In this situation it would appear that petitioners have lost all right to urge this as a ground of reversal in this Court and that it should not be noticed.

A. Schrader's Sons, Inc. v. *Wein Sales Corp.*, (C. C. A. 2) 9 F. (2d) 306;
U. S., ex rel. Mastoras v. *McCandless*, (C. C. A. 3) 61 F. (2d) 366;
Helvering v. *Helmholz*, (U. S. C. A., D. C.) 75 F. (2d) 245;
Rorick v. *Devon Syndicate, Ltd.*, 307 U. S. 299.

In the last cited case the Court said, (at page 303):

"Of the various questions raised below and briefed here, only those urged in the petition for certiorari and incidental to their determination will be considered on review. *General Talking Pictures Corp.* v. *Western Electric Co.*, 304 U. S. 175; *Connecticut Railway & Lighting Co.* v. *Palmer*, 305 U. S. 493."

The various circuit courts of appeals have consistently awarded interest in cases of this character and this Court has consistently denied *certiorari*.

In the case of *Redfield Independent School District No. 20* . *Schnetzer*, 94 F. (2d) 257, the trial court awarded interest rom the date of the conversion of the illegally pledged se- urities, which was noted by the Appellate Court, where in s opinion on page 258 it said:

"The trial court held that the pledge was void; that the school district was an unsecured creditor which had, by mistake, received an overpayment out of the assets of the insolvent estate; and that *the receiver was entitled to recover the overpayment with interest.* Judgment was entered accordingly." (Italics supplied.)

The Appellate Court concluded (at page 259):

"The judgment of the court below was correct and is affirmed."

n *Hood* v. *Hardesty*, 94 F. (2d) 26, the trial court granted erest from the date of the preferential payment to the te bank receiver, and the allowance of interest was in- led in the general affirmance of the Circuit Court without ment.

City of Chicago v. *Joseph*, 95 F. (2d) 444, (cert. den. U. S. 578), the Court in awarding interest, stated (at e 447):

"When the city wrongfully retained the property of plaintiff and converted it into money, it committed a wrongful act and is *chargeable with interest* from the time of demand." (Italics supplied.)

The District Court there having failed to allow interest, the Appellate Court ordered (at page 447):

> "The judgment is reversed, with directions to the District Court to enter one for the same amount with interest at 5 per cent, from the date of demand and the costs in that court."

And see:

LaParr v. *City of Rockford*, (C. C. A. 7) 100 F. (2d) 564, 568;
Downey v. *City of Yonkers*, (S. D. N. Y.) 23 Fed. Supp. 1018, affirmed;
Downey v. *City of Yonkers*, (C. C. A. 2) Aug. 3, 1939.

IV.

CONCLUSION.

Applying the principles in the foregoing discussion to the instant case, and particularly with reference to the principles developed in *Osborn* v. *Bank of United States*, it seems to respondent that inasmuch as recovery of the fund in the *Osborn* case was permitted on the ground, inter alia, that the transaction in the course of which it was acquired was void and hence no beneficial interest passed, so, in the instant case, the pledge contract was void and no beneficial interest passed either as to the pledged assets or their proceeds. No valid and substantial distinction can be drawn from the factual difference that in the *Osborn* case the fund was in the form of money held in a trunk which the holder thereof was obliged to turn over to the true owner by such affirmative acts as might be necessary to accomplish such delivery and the fact that in the instant case the proceeds of the collateral are held in the Hamilton Bank and that the petitioners may be required to take affirmative action by way of withdrawing it from the bank and restoring it to respondent. The factual difference between money in a trunk and money on credit in a bank does not result in a difference in principle between the two cases. Petitioners do not have to obtain an appropriation

Congress to withdraw the money from the bank nor do
y have to obtain the permission of the Canal Zone gov-
ment to withdraw the money from the bank; it was put
e illegally by petitioners' predecessors and retained
e illegally by petitioners and therefore petitioners
ld be required to withdraw the funds from the bank
restore them to respondent as the rightful owner.
e is no difference in legal effect between possession of
se in action such as a bank account and possession of
other type of personal property.

Respectfully submitted,

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orneys for Comptroller of Currency,
Of Counsel.

OCT 5 1939
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 5.

HARRY H. WOODRING, Secretary of War, and H. A. A. SMITH, General Purchasing Officer and Chief of Washington Office, Panama Canal, *Petitioners,*

v.

JUSTUS S. WARDELL, Receiver, District National Bank of Washington, D. C., *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

APPENDIX FOR THE RESPONDENT.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

National Bank Act: Page

R. S. Sec. 5136 (Sec. 24, Title 12, U. S. C.)..... 4
R. S. Sec. 5153 (Sec. 90, Title 12, U. S. C.)..... 6
R. S. Sec. 5242 (Sec. 91, Title 12, U. S. C.)..... 7
R. S. Sec. 5234 (Sec. 192, Title 12, U. S. C.)..... 7
R. S. Sec. 5236 (Sec. 194, Title 12, U. S. C.)..... 8

Depositary Statutes:

R. S. 5153 (Sec. 90, Title 12, U. S. C.)
Act of Dec. 23, 1913, c. 6, Sec. 9, 38 Stat. 259, as amended (Sec. 332, Title 12, U. S. C.)..... 9
Act of Mar. 3, 1911, c. 210, Sec. 17, 36 Stat. 1070, (Sec. 156, Title 25, U. S. C.)..... 9
Act of May 18, 1916, c. 126, Sec. 2, 39 Stat. 159, (Sec. 759, Title 39, U. S. C.)..... 10
Act of June 22, 1938, c. 575, Sec. 1, 52 Stat. 872, (Sec. 101, Title 11, U. S. C.)..... 3

Miscellaneous Statutes:

R. S. Sec. 3466 (Sec. 191, Title 31, U. S. C.)..... 10
Sec. 15, Title 6, U. S. C..... 1
Public Act 355—72nd Cong. [H. R. 7514]..... 57

Executive Orders:

Executive Order of January 27, 1914.....48-51
Executive Order of September 8, 1911..... 55
Executive Order of September 5, 1914..... 64

Correspondence:

Letter of May 9, 1904, from the President to the Secretary of War 71
Letter of April 4, 1913, from Assistant Secretary Williams to the President of the District National Bank 36
Letter of November 15, 1977, from Assistant Secretary Leffingwell to the Cashier of the District National Bank 36

Page

Letter of March 24, 1920, from Assistant Secretary Leffingwell to the Cashier of the District National Bank 12, 37
Letter of November 5, 1920, from Division of Deposits, Treasury Department to Cashier of the District National Bank 38
Letter of January 23, 1930, from Division of Deposits, Treasury Department to Cashier of the District National Bank 39
Letter of October 21, 1933, from Division of Deposits, Treasury Department to Cashier of the District National Bank 40

Decisions, Regulations, Reports, etc.:

Governor of Panama Canal Zone Circulars No. 660-2 51-55
Decision of Comptroller of Treasury, 11 C. D. 36 ... 40-47
Treasury Dept. Circular No. 176 (Dec. 31, 1919) 14-35
House Report No. 526, 72nd Cong., 1st Sess. [H. R. 7514] 59-67
Certificate of Tax—Sale in U. S. v. Lee, 106 U. S. 196 67

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v.

JUSTUS S. WARDELL, Receiver, District National Bank of Washington, D. C., *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

APPENDIX FOR THE RESPONDENT.

U. S. C., Title 6, Sec. 15.

BONDS OR NOTES OF UNITED STATES IN LIEU OF RECOGNIZANCE, STIPULATION, BOND, GUARANTY, OR UNDERTAKING; PLACE OF DEPOSIT; RETURN TO DEPOSITOR; CONTRACTORS' BONDS. Wherever by the laws of the United States or regulations made pursuant thereto, any person is required

to furnish any recognizance, stipulation, bond, guaranty, or undertaking, hereinafter called "penal bond," with surety or sureties, such person may, in lieu of such surety or sureties, deposit as security with the official having authority to approve such penal bond, United States Liberty bonds or other bonds or notes of the United States in a sum equal at their par value to the amount of such penal bond required to be furnished, together with an agreement authorizing such official to collect or sell such bonds or notes so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. The acceptance of such United States bonds or notes in lieu of surety or sureties required by law shall have the same force and effect as individual or corporate sureties, or certified checks, bank drafts, post-office money orders, or cash, for the penalty or amount of such penal bond. The bonds or notes deposited hereunder, and such other United States bonds or notes as may be substituted therefor from time to time as such security, may be deposited with the Treasurer of the United States, a Federal reserve bank, or other depositary duly designated for that purpose by the Secretary, which shall issue receipt therefor, describing such bonds or notes so deposited. As soon as security for the performance of such penal bond is no longer necessary, such bonds or notes so deposited shall be returned to the depositor. In case a person or persons supplying a contractor with labor or material as provided by section 270 of Title 40 shall file with the obligee, at any time after a default in the performance of any contract subject to said section 270, the application and affidavit therein provided, the obligee shall not deliver to the obligor the deposited bonds or notes nor any surplus proceeds thereof until the expiration of the time limited by said section 270 for the institution of suit by such person or persons, and, in case suit shall be instituted within such time, shall hold said bonds or notes or proceeds subject to the order of the court having jurisdiction thereof. Nothing herein contained shall affect or impair the priority of the claim of the United States against the bonds or notes deposited or any right or remedy granted by said section 270 or by this section to the United States for default upon any obligation of said penal bond. All laws inconsistent with this section are hereby so modified as to conform to the provisions hereof.

othing contained herein shall affect the authority of urts over the security, where such bonds are taken as curity in judicial proceedings, or the authority of any lministrative officer of the United States to receive United ates bonds for security in cases authorized by existing ws. The Secretary may prescribe rules and regulations cessary and proper for carrying this section into effect. he term "person" in this section means an individual, a ust or estate, a partnership, or a corporation; the term Secretary" means the Secretary of the Treasury. (Feb. , 1919, c. 18, sec. 1320, 40 Stat. 1148; Nov. 23, 1921, c. 136, c. 1329, 42 Stat. 318; June 2, 1924, 4.01 p. m., c. 234, sec. 2, 29, 43 Stat. 253, 349.)

. S. C., Title 11, Section 101. Depositories for money.

The judges of the several courts of bankruptcy shall desnate, by order, banking institutions as depositories for e money of estates under this title, as convenient as may to the residences of receivers and trustees, and shall quire from each such banking institution a good and suffient bond with surety, to secure the prompt repayment of e deposit. Said judges may, in accordance with the prosions of, and the authority conferred in section 1126 of e Revenue Act of 1926, as amended accept the deposit of e securities therein designated, in lieu of a surety or ireties upon such bond and may, from time to time as casion may require, by like order increase or decrease the mber of depositories or the amount of any bond or other curity or change such depositories: Provided, That no curity in the form of a bond or otherwise shall be reired in the case of such part of the deposits as are inred under section 264 of Title 12, as amended: And prolded further, That depository banks shall place such seurities, accepted for deposit in lieu of a surety or sureties on depository bonds, in the custody of Federal Reserve anks or branches thereof designated by the judges of the veral courts of bankruptcy, subject to the orders of such dges. All national banking associations designated as positories, pursuant to the provisions of this section of is title, are authorized to give such security as may be quired. All pledges of securities heretofore made for e purposes herein named are hereby ratified, validated

and approved. As amended June 22, 1938, c. 575, Sec. 1, 52 Stat. 872.

U. S. C., Title 12, sec. 24. Corporate powers of associations.

Upon duly making and filing articles of association and an organization certificate a national banking association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

First. To adopt and use a corporate seal.

Second. To have succession from February 25, 1927, or from the date of its organization if organized after February 25, 1927, until such time as it be dissolved by the act of its shareholders owning two-thirds of its stock, or until its franchise becomes forfeited by reason of violation of law, or until terminated by either a general or a special Act of Congress or until its affairs be placed in the hands of a receiver and finally wound up by him.

Third. To make contracts.

Fourth. To sue and be sued, complain and defend, in any court of law and equity, as fully as natural persons.

Fifth. To elect or appoint directors, and by its board of directors to appoint a president, vice president, cashier, and other officers, define their duties, require bonds of them and fix the penalty thereof, dismiss such officers or any of them at pleasure, and appoint others to fill their places.

Sixth. To prescribe, by its board of directors, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of

debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this title. The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock: *Provided,* That the association may purchase for its own account investment securities under such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe. In no event shall the total amount of the investment securities of any one obligor or maker, held by the association for its own account, exceed at any time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund, except that this limitation shall not require any association to dispose of any securities lawfully held by it on August 23, 1935. As used in this section the term "investment securities" shall mean marketable obligations evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further definition of the term "investment securities" as may by regulation be prescribed by the Comptroller of the Currency. Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation. The limitations and restrictions herein contained as to dealing in, underwriting and purchasing for its own account, investment securities shall not apply to obligations of the United States, or general obligations of any State or of any political subdivision thereof, or obligations issued under authority of chapter 7 of this title, or issued by the Federal Home Loan Banks or the Home Owners' Loan Corporation, or obligations which are insured by the Federal Housing Administrator pursuant to section 1713 of this title, if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States: *Provided,* That in carrying on the business commonly known as the safe-deposit business

the association shall not invest in the capital stock of a corporation organized under the law of any State to conduct a safe-deposit business in an amount in excess of 15 per centum of the capital stock of the association actually paid in and unimpaired and 15 per centum of its unimpaired surplus.

The restrictions of this section as to dealing in investment securities shall take effect one year after June 16, 1933.

But no association shall transact any business except such as is incidental and necessarily preliminary to its organization, until it has been authorized by the Comptroller of the Currency to commence the business of banking. (R. S. sec. 5136; July 1, 1922, c. 257, sec. 1, 42 Stat. 767; Feb. 25, 1927, c. 191, sec. 2, 44 Stat. 1226; June 16, 1933, c. 89, sec. 16, 48 Stat. 184; Aug. 23, 1935, c. 614, sec. 308, 49 Stat. 709.)

U. S. C., Title 12, sec. 90. Depositaries of public moneys and financial agents of Government.

All national banking associations, designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government as may be required of them. The Secretary of the Treasury shall require the associations thus designated to give satisfactory security, by the deposit of United States bonds and otherwise, for the safekeeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government: *Provided*, That the Secretary shall, on or before the 1st of January of each year, make a public statement of the securities required during that year for such deposits. And every association so designated as receiver or depositary of the public money shall take and receive at par all of the national currency bills, by whatever association issued, which have been paid into the Government for internal revenue, or for loans or stocks: *Provided*, That the Secretary of the Treasury shall distribute the deposits

herein provided for, as far as practicable, equitably between the different States and sections.

Any association may, upon the deposit with it of public money of a State or any political subdivision thereof, give security for the safekeeping and prompt payment of the money so deposited, of the same kind as is authorized by the law of the State in which such association is located in the case of other banking institutions in the State. (R. S. sec. 5153; Mar. 3, 1901, c. 871, 31 Stat. 1448; Mar. 4, 1907, c. 2913, sec. 3, 34 Stat. 1290; Dec. 23, 1913, c. 6, sec. 27, 38 Stat. 274; Aug. 4, 1914, c. 225, 38 Stat. 682; June 25, 1930, c. 604, 46 Stat. 809.)

U. S. C., Title 12, sec. 91. Transfers by bank and other acts in contemplation of insolvency.

All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void; and no attachment, injunction or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal court. (R. S. sec. 5242.)

U. S. C., Title 12, sec. 192. Default in payment of circulating notes.

On becoming satisfied, as specified in sections 131 and 132 of this title, that any association has refused to pay its circulating notes as therein mentioned, and is in default, the Comptroller of the Currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper. Such receiver, under the direction of the comptroller, shall take possession of the books, records,

and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct; and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders. Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the comptroller, and also make report to the comptroller of all his acts and proceedings.

Provided, That the comptroller may, if he deems proper, deposit any of the money so made in any regular Government depositary, or in any State or national bank either of the city or town in which the insolvent bank was located, or of a city or town as adjacent thereto as practicable; if such deposit is made he shall require the depositary to deposit United States bonds or other satisfactory securities with the Treasurer of the United States for the safekeeping and prompt payment of the money so deposited: *Provided,* That no security in the form of deposit of United States bonds, or otherwise, shall be required in the case of such parts of the deposits as are insured under section 264 of this title. Such depository shall pay upon such money interest at such rate as the comptroller may prescribe, not less, however, than 2 per centum per annum upon the average monthly amount of such deposits. (R. S. sec. 5234; May 15, 1916, c. 121, 39 Stat. 121; Aug. 23, 1935, c. 614, sec. 339, 49 Stat. 721.)

U. S. C., Title 12, sec. 194. Dividends on adjusted claims; distribution of assets.

From time to time, after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association, the comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated;

and the remainder of the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives, in proportion to the stock by them respectively held. (R. S. sec. 5236.)

U. S. C., Title 12, Section 332. Depositaries of public money; financial agents; security required.

All banks or trust companies incorporated by special law or organized under the general laws of any State, which are members of the Federal reserve system, when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them. The Secretary of the Treasury shall require of the banks and trust companies thus designated satisfactory security, by the deposit of United States bonds or otherwise, for the safe keeping and prompt payment of the public money deposited with them and for the faithful performance of their duties as financial agents of the Government. (Dec. 23, 1913, c. 6, Sec. 9, 38 Stat. 259; May 7, 1928, c. 507, 45 Stat. 492.)

U. S. C., Title 25, Section 156.

Deposit of funds from sales of lands and property of Five Civilized Tribes. The net receipts from the sales of surplus and unallotted lands and other tribal property belonging to any of the Five Civilized Tribes, after deducting the necessary expense of advertising and sale, may be deposited in national or State banks in the State of Oklahoma in the discretion of the Secretary of the Interior, such depositories to be designated by him under such rules and regulations governing the rate of interest thereon, the time of deposit and withdrawal thereof, and the security therefor, as he may prescribe. The interest accruing on such funds may be used to defray the expense of the per capita payments of such funds. (Mar. 3, 1911, c. 210, Sec. 17, 36 Stat. 1070.)

U. S. C., Title 31, Sec. 191.

PRIORITY ESTABLISHED. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed. (R. S., sec. 3466.)

U. S. C., Title 39, Sec. 759.

DEPOSIT OF FUNDS IN BANKS; INTEREST; RESERVE; SECURITY; DEPOSITS WITH TREASURER OF BOARD OF TRUSTEES. Postal savings funds received under the provisions of this chapter shall be deposited in solvent banks, whether organized under national or State laws, and whether member banks or not of the Federal reserve system, being subject to national or State supervision and examination, and the sums deposited shall bear interest at the rate of not less than 2¼ per centum per annum, which rate shall be uniform throughout the United States and Territories thereof; but 5 per centum of such funds shall be withdrawn by the board of trustees and kept with the Treasurer of the United States, who shall be treasurer of the board of trustees, in lawful money as a reserve. The board of trustees shall take from such banks such security in public bonds or other securities, authorized by Act of Congress or supported by the taxing power, as the board may prescribe, approve, and deem sufficient and necessary to insure the safety and prompt payment of such deposits on demand. The funds received at the postal savings depository offices in each city, town, village, and other locality shall be deposited in banks located therein (substantially in proportion to the capital and surplus of each such bank) willing to receive such deposits under the terms of this chapter and the regulations made by authority thereof. If one or more member banks of the Federal reserve system exists in the city, town, village, or locality where the postal sav-

gs deposits are made, such deposits shall be placed in ch qualified member banks substantially in proportion the capital and surplus of each such bank, but if such ember banks fail to qualify to receive such deposits, then y other bank located therein may, as hereinbefore pro-ded, qualify and receive the same. If no such member nk and no other qualified bank exists in any city, town, llage, or locality, or if none where such deposits are made ill receive such deposits on the terms prescribed, then ch funds shall be deposited under the terms of this chap-r in the bank most convenient to such locality. If no such nk in any State or Territory is willing to receive such eposits on the terms prescribed, then such funds shall be eposited with the treasurer of the board of trustees and all be counted in making up the reserve of 5 per centum. uch funds may be withdrawn from the treasurer of said oard of trustees, and all other postal savings funds, or ny part of such funds, may be at any time withdrawn from e banks and savings depository offices for the repayment postal savings depositors when required for that pur-ose. If at any time the postal savings deposits in any tate or Territory shall exceed the amount which the quali-ed banks therein are willing to receive under the terms this chapter, and such excess amount is not required to ake up the reserve fund of 5 per centum hereinbefore rovided for, the board of trustees may invest all or any art of such excess amount in bonds or other securities of e United States. When, in the judgment of the Presi-ent, the general welfare and interests of the United States require, the board of trustees may invest all or any part the postal savings funds, except the reserve fund of 5 er centum herein provided for, in bonds or other securi-es of the United States. The board of trustees may in its iscretion purchase from the holders thereof bonds which ave been or may be issued under the provisions of section 60 of this title. Interest and profit accruing from the de-osits or investment of postal savings funds shall be ap-lied to the payment of interest due to postal savings de-ositors, as hereinbefore provided, and the excess thereof, any, shall be covered into the Treasury of the United tates as a part of the postal revenue. Postal savings nds in the treasury of said board shall be subject to dis-osition as provided in this chapter, and not otherwise. he board of trustees may at any time dispose of bonds

held as postal savings investments and use the proceeds to meet withdrawals of deposits by depositors. The word "Territory" as used herein shall be held to include the District of Columbia, the Territory of Alaska, and Porto Rico, and the word "bank" shall be held to include savings banks and trust companies doing a banking business. (Aug. 24, 1912, c. 387, sec. 1, 37 Stat. 512; May 18, 1916, c. 126, sec. 2, 39 Stat. 159.)

COPY

March 24, 1920

Cashier,
District National Bank,
Washington, D. C.

Dear Sir:

The Government is borrowing on Treasury certificates of indebtedness at rates of interest varying from 4¼% to 4¾%. The Treasury, therefore, has no surplus funds to leave with National bank depositaries at 2% interest, except where it is necessary to maintain balances with such depositaries for the performance of some essential Government business. Having discontinued all national bank dpositaries in cities where Federal Reserve Banks and branch Federal Reserve Banks are located and equipped to transact the Government's business, the Treasury feels that it must, as a measure of consistency and of administrative economy, discontinue national bank depositaries in the city of Washington where the office of the Treasurer of the United States is located.

You will, accordingly, please transfer on or before March 31st to the Treasurer of the United States all funds on deposit with your bank to the credit of the Treasurer's General Account, and from that date you will accept no deposits to the credit of that account.

After the transfer of funds has been made as directed, you should forward to this office and to the Treasurer of the United States a final transcript reporting the transfer to have been made. There should be attached to the transcript furnished this office a statement sworn to by the President and Cashier of your bank to the effect that:

"The balance above reported as transferred comprised the entire indebtedness of this bank for public moneys on deposit to the credit of the Treasurer of the United States."

your bank has on deposit any funds to the credit of r Government officers than the Treasurer of the United es, excluding bankruptcy funds and postal savings ds, please advise this office immediately and you will nstructed as to the disposition of those funds.

pon payment of the interest due and the receipt by Treasurer of the United States of a Resolution of your rd of Directors authorizing the withdrawal and dispo-n of the collateral now lodged with the Treasurer to re the public deposit, together with his receipt which now hold for said collateral, the securities in question be released and the District National Bank of Wash-on, D. C. discontinued as a depositary of public moneys.

he above discontinuance, however, does not affect the gnation of your bank as a special depositary under the visions of Department Circular No. 92.

y direction of the Secretary.

Respectfully,

(signed) R. C. LEFFINGWELL
Assistant Secretary of the Treasury.

B/cp

1919.
Department Circular No. 176.

Public Moneys.

TREASURY DEPARTMENT,
Office of the Secretary,
Washington, December 31 1919.

To the Treasurer and Assistant Treasurers of the United States, Federal Reserve Banks, National Bank Depositaries, Special Depositaries of Public Moneys, Collectors of Internal Revenue, Collectors of Customs, Receivers of Public Moneys, Depository Postmasters, Marshals and Clerks of Courts, all other Officers or Agents of the United States engaged in collecting, depositing, or transmitting public moneys, and others concerned:

DEPOSIT OF PUBLIC MONEYS.

1. All public moneys shall be deposited with the Treasurer of the United States, Federal Reserve Banks and branches, Assistant Treasurers of the United States, and regular National bank depositaries, and, as provided in paragraph 3 hereof, with special depositaries under the act approved September 24, 1917, as amended and supplemented, all in accordance with the provisions of this circular and subject to the exceptions hereinafter provided. All deposits of public moneys hereunder (except with such special depositaries) shall be for credit to the account of the Treasurer of the United States. The term "Federal Reserve Bank" where it appears in this circular, unless otherwise indicated by the context, includes branch Federal Reserve Banks with which deposits are authorized to be made. All collectors, receivers of public moneys of every description, and other persons having public money to pay to the United States are hereinafter sometimes called depositors of public moneys.

GENERAL PROVISIONS AS TO DEPOSITARIES.

2. *Classes of depositaries.*—The established policy of the Treasury Department is to designate and maintain balances with regular National bank depositaries of public moneys only at points where a depositary is necessary to meet the requirements of Government officers for cash for pay-roll or other expenditures, and then only if there is no Federal Reserve Bank or branch located at or near the point. National banks when designated by the Secretary of the Treasury, however, may be depositaries of public moneys with a maximum qualification, for the sole purpose of receiving deposits made by United States courts and their officers, by postmasters, or by other duly authorized Government officers, for credit to their official disbursing accounts elsewhere than with the Treasurer of the United States, provided that such depositaries qualify, before receiving deposits, by pledging as collateral security for such deposits, including interest thereon, securities of the classes described in paragraph 26 hereof, to an amount, taken at the rates therein provided, at least equal to such deposits. National bank depositaries designated with a maximum qualification for this purpose alone are not thereby authorized to accept any other deposits hereunder. Deposits arising from the proceeds of sales of bonds, notes, and Treasury certificates of indebtedness of the United States, and the payment of income and profits taxes, may be made from time to time with special depositaries of public moneys under the act of Congress approved September 24, 1917, as amended and supplemented. Other deposits of public moneys are maintained with the several Federal Reserve Banks, pursuant to the provisions of Section 15 of the Federal Reserve Act, as amended. All inactive National bank depositaries are being discontinued, pursuant to action already taken by the Secretary of the Treasury.

3. *Special depositaries.*—Any incorporated bank or trust company in the United States desiring to participate in deposits of public moneys arising from the sale of bonds, notes, or Treasury certificates of indebtedness of the United States, or from the payment of income or profits taxes, under Section 8 of the act approved September 24, 1917, as amended and supplemented, may make application for

designation as a special depositary of public moneys to the Federal Reserve Bank of its district, pursuant to Treasury Department Circular No. 92, as from time to time amended and supplemented. Detailed regulations governing such depositaries are prescribed in said circular, to which reference is hereby made. The remaining provisions of this circular do not apply to or govern special depositaries under said circular, and such depositaries are not, by virtue of such designation or their qualification thereunder, authorized to accept deposits hereunder from collectors or other depositors of public moneys for credit to the account of the Treasurer of the United States, or to the official disbursing accounts of Government officers.

GENERAL PROVISIONS AS TO DEPOSITS.

4. *Cash Deposits.*—All cash received by collectors of internal revenue, collectors of customs, depository postmasters, and other depositors of public moneys shall be deposited, if the depositor is located in the same city with a Federal Reserve Bank or branch bank, with such Federal Reserve Bank or branch bank, and in other cases with the regular national bank depositary or depositaries with which the depositor has been making such deposits, unless and until otherwise instructed by the Secretary of the Treasury: *Provided, however,* That depositors located in the District of Columbia shall make such deposits direct with the Treasurer of the United States. Payments made by postal or express money order shall be handled, subject to collection, in the same manner as cash.

5. *Checks and drafts.*—All checks received by any Government officer are received subject to collection, and in the event that any check can not be collected or is lost or destroyed before collection, appropriate action must be taken by the depositor in the same manner as if no check had been received. Payments made by check are not effective unless and until the check has actually been duly collected and paid. All checks shall be deposited as hereinafter specifically provided. Bank drafts shall be handled hereunder in the same manner as checks.

6. *Certificates of deposit.*—Certificates of deposit shall be issued, until further notice, on the following forms: Internal Revenue, Form 15 (National Banks); Customs, Form

1¾ (National Banks); Public Lands, Surveys and Patent Fees, Form 1A (National Banks); Army, Navy, Judiciary, and Indian, Form 1 (National Banks); Surplus Money Order Funds, Forms 6594 and 6594A; Surplus Postal Funds, Form 6598; Deposits for official checking account with Treasurer of United States, Form 6599; and Sales of War-Savings securities, Form 1312. The original of each certificate of deposit (unless otherwise specifically instructed, as in cases where the funds represented thereby are not to be covered into the Treasury by warrant) shall be transmitted to the Secretary of the Treasury (Division of Public Moneys), through the office of the Treasurer of the United States, with the transcript on Form 17 (National Banks), on which the credit appears. The other certificates of deposit in the set should be disposed of in accordance with the instructions which appear on the certificate, and one copy may be retained by the depositary for its own records. Federal Reserve Banks and branches shall see that the face of each certificate in any set of certificates of deposit covering in whole or in part items other than cash for which immediate credit is given, bears a legend reading as follows: "This certificate of deposit issued subject to deduction for uncollectible items." It is of the utmost importance that certificates of deposit be properly issued, and in this connection, depositaries should give special attention to two points, viz: (1) The name and title (if any) of the depositor, as *John Doe, receiver of public moneys,* or, in cases where the deposit is made by one person for account of another person, *John Doe, receiver of public moneys, through Richard Roe;* and (2) the account or purpose for which the deposit is received, as *Sales of public lands,* or *Sales of War-Savings securities,* with a notation of the series, which should be clearly indicated in order to enable the Treasury Department to classify the deposit and credit the proper receipt account at the same time that the depositary is charged with the amount of the deposit. Depositaries receiving deposits of Internal Revenue receipts are particularly requested to use great care in specifying upon the face of certificates of deposit on Form 15 (National Banks) deposits of "Income and Profits Taxes" separate and distinct in each case from deposits of Miscellaneous Internal Revenue Collections (formerly called "Ordinary"). It is not necessary, however, to make

any further separation of classes of Internal Revenue deposits on the face of certificates of deposit on Form 15 (National Banks).

7. *Unauthorized receipt or use of public money.*—Section 96 of the act of Congress approved March 4, 1909, provides the following penalties for the unauthorized receipt or use of public money:

Every banker, broker, or other person not an authorized depositary of public moneys, who shall knowingly receive from any disbursing officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or shall use, transfer, convert, appropriate, or apply any portion of the public money for any purpose not prescribed by law; and every president, cashier, teller, director, or other officer of any bank or banking association who shall violate any provision of this section is guilty of embezzlement of the public money so deposited, loaned, transferred, used, converted, appropriated, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both.

8. *Deposit of checks.*—On and after March 1, 1920, and until otherwise directed by the Secretary of the Treasury, all checks (including bank drafts) received by collectors of internal revenue, collectors of customs, depository postmasters, and other depositors of public moneys (except checks for deposit in authorized official disbursing accounts maintained by Government officers elsewhere than with the Treasurer of the United States) shall be deposited pursuant to the following instructions:

FOR SPECIAL ATTENTION OF COLLECTORS OF INTERNAL REVENUE.

9. *Deposit of checks with Federal Reserve Banks and branches.*—All checks, whether certified or uncertified, and whether or not drawn on banks or trust companies located in the same city with the collector, received by collectors of internal revenue (hereinafter in this title called collectors) and their deputies in payment of internal revenue taxes, including income and profits taxes, shall be forwarded for deposit each day by collectors, unless otherwise specifically instructed by the Secretary of the Treasury, to the Federal Reserve Bank of the district in which the collector's head office is located (or, in case the head office is located in the same city with a branch Federal Reserve Bank, to such branch Federal Reserve Bank). Specific instructions may be given by the Secretary of the Treasury in certain instances for the deposit of checks with

Federal Reserve Banks of other districts, and branches thereof. Collectors will make the necessary arrangements for deposits by their deputies in accordance herewith. Stamp deputy collectors who are located away from the head office and who receive checks in payment of internal revenue taxes will forward them to the collectors of internal revenue for their respective districts; provided, however, that if there is a Federal Reserve Bank or branch in the same city with the office of the stamp deputy collector, he shall at all times deposit such checks with such Federal Reserve Bank or branch.

10. *Classification of checks for deposit.*—Checks forwarded to the Federal Reserve Bank in accordance herewith must be accompanied by a letter of transmittal or a draft certificate of deposit (original, duplicate, and triplicate, in proper form, to be signed, dated, and numbered by the Federal Reserve Bank), and such letter of transmittal or draft certificate of deposit must, in all cases, specify the amount of the deposit representing Income and Profits Taxes separate and distinct from the amount representing Miscellaneous Internal Revenue Collections (formerly called "Ordinary"). The checks so forwarded may be inclosed under one outer wrapper, but must be separated into two classes, namely:

(1) Checks received exclusively in payment of income and profits taxes, inclosed in a separate package containing an inner wrapper or label plainly marked "Income and Profits Tax Checks only."

(2) All other checks received (in whole or in part) in payment of other internal-revenue taxes, inclosed in a separate package containing an inner wrapper or label plainly marked "Internal Revenue Collections."

Whenever practicable, collectors of internal revenue should arrange the checks so forwarded into at least two groups, namely:

(a) Checks drawn on banks and trust companies located in the same city with the Federal Reserve Bank or branch to which the checks are forwarded.

(b) Checks drawn on banks and trust companies located outside of the city in which is located the Federal Reserve Bank or branch to which the checks are forwarded.

11. *Indorsement, transmission, and collection of checks.*—The collector should stamp on the face of each check de-

posited the words, "This check is in payment of an obligation to the United States and must be paid at par. No protest," with his name and title. The Federal Reserve Bank will make an effort to collect every check on these terms. If the bank on which a check is drawn refuses to pay it at par, it will be returned to the collector in the same manner as a bad check. Checks received exclusively in payment of income and profits taxes, whether certified or uncertified, when forwarded to the Federal Reserve Bank, should be indorsed:

Pay to the order of the Federal Reserve Bank of .....
(Insert name of city in which Federal Reserve Bank, not branch, is located.)

Income and Profits Tax Account.

All other checks, whether certified or uncertified, when forwarded to the Federal Reserve Bank, should be indorsed:

Pay to the order of the Federal Reserve Bank of .....
(Insert name of city in which Federal Reserve Bank, not branch, is located.)

Internal Revenue Collections.

The checks must in all cases be forwarded by registered mail. Inasmuch as the indorsement is specific, it is not necessary that the checks be insured. Collectors and deputy collectors must, however, retain a record of the checks forwarded, so that if any checks are lost, payment may be immedately stopped and duplicates secured. Collectors are authorized by the Commissioner of Internal Revenue to incur any necessary expense from the appropriation "Collecting the War Revenue," for postage and registration charges. When transmitting the checks to the Federal Reserve Bank, the collector should request the Federal Reserve Bank to issue a certificate of deposit on Form 15 (National Banks) in his name, and to send the duplicate and triplicate of the certificate of deposit to his office, for disposition in accordance with the instructions which appear on the margin of the certificate.

12. *Uncollected and lost checks.*—Taxpayers whose checks are returned uncollected by a depositary should be immediately notified by the collector to make the checks good. If any taxpayer should fail to comply, the collector should proceed to collect the taxes by the usual methods, as though no check had been given, and if he fails to make collection within thirty days will accept the return of the check from

the Federal Reserve Bank and give receipt therefor on the reverse of Form N, copy attached. In the event that any checks for which a certificate of deposit has been given are reported lost after deposit, the collector will promptly notify the taxpayer that the check has been lost and request him to stop payment thereon and make payment by another check or cash in lieu of the original check. If the taxpayer refuses or neglects to comply, the collector should proceed to collect the taxes by the usual methods, as though no check had been given. If the taxpayer makes payment on account of the lost check, or the amount is otherwise collected, the amount should be delivered to the Federal Reserve Bank against the certificate of deposit already issued therefor. If at the expiration of thirty days the matter has not been satisfactorily adjusted, the collector will make full report to the Secretary of the Treasury, Division of Public Moneys, and receive specific instructions. Collectors are not authorized to give receipts to the depositary for lost checks.

FOR SPECIAL ATTENTION OF COLLECTORS OF CUSTOMS.

13. *Deposit of checks with Federal Reserve Banks and branches.*—All checks received by collectors of customs (hereinafter in this title called collectors and deputy collectors), whether or not such checks are drawn on banks and trust companies located in the same city with the collector, shall be forwarded for deposit each day by collectors, unless otherwise specifically instructed by the Secretary of the Treasury, to the Federal Reserve Bank of the district in which the collector's head office is located (or, in case the head office is located in the same city with a branch Federal Reserve Bank, to such branch Federal Reserve Bank). Specific instructions may be given by the Secretary of the Treasury in certain instances for the deposit of checks with Federal Reserve Banks of other districts, and branches thereof. Collectors will make the necessary arrangments for deposits by their deputies in accordance with this circular. Checks forwarded to the Federal Reserve Bank in accordance herewith must be accompanied by a letter of transmittal or a draft certificate of deposit (to consist of a full set, in proper form, to be signed, dated, and numbered by the Federal Reserve Bank), and such letter of transmittal or draft certificate of deposit must,

in all cases, specify the amounts of the deposits representing collections for the Treasury Department, Department of Commerce and Department of Labor, separate and distinct from each other, and must make such further specification within each Department as shall be required.

14. *Indorsement, transmission, and collection of checks.*—The collector should stamp on the face of each check deposited the words, "This check is in payment of an obligation to the United States and must be paid at par. No protest," with his name and title. The Federal Reserve Bank will make an effort to collect every check on these terms. If the bank on which a check is drawn refuses to pay it at par, it will be returned to the collector in the same manner as a bad check. All checks forwarded by the collector to the Federal Reserve Bank should be indorsed:

Pay to the order of the Federal Reserve Bank of .....
(Insert name of city in which Federal Reserve Bank, not branch, is located.)

with appropriate specification as to the class of deposit. The checks must, in all cases, be forwarded by registered mail. Inasmuch as the indorsement is specific, it is not necessary that the checks be insured. Collectors and deputy collectors must, however, retain a record of the checks forwarded so that if any checks are lost, payment may be immediately stopped and duplicates secured. Collectors are authorized to incur any necessary expense from the appropriation for Collecting the Revenue from Customs, for postage and registration charges. When transmitting the checks to the Federal Reserve Bank, the collector should request the Federal Reserve Bank to issue a certificate of deposit on Form 1¾ (National Banks) in his name, and to make disposition of the certificates in the set in accordance with the instructions which appear on the certificate.

FOR SPECIAL ATTENTION OF POSTMASTERS.

15. *Deposit of checks with Federal Reserve Banks and branches.*—All checks received by State depository postmasters representing surplus postal funds, surplus money-order funds, and receipts from sales of War-Savings securities (except to the extent that surplus postal funds and surplus money-order funds may be required for use by the depository postmaster for authorized postal expenditures,

or the redemption of War-Savings Certificates), whether or not such checks are drawn on banks and trust companies located in the same city with the postmaster, shall be forwarded for deposit each day, unless otherwise specifically instructed, to the Federal Reserve Bank of the district in which the post office is located (or, in case the post office is located in the same city with a branch Federal Reserve Bank, to such branch Federal Reserve Bank.) Specific instructions may be given by the Secretary of the Treasury in certain instances for the deposit of checks with Federal Reserve Banks of other districts, and branches thereof. The postmaster at Washington, D. C., shall make deposits hereunder with the Treasurer of the United States direct. Checks forwarded to the Federal Reserve Bank in accordance herewith must be accompanied by a letter of transmittal or a draft certificate of deposit (to consist of a full set, in proper form, to be signed, dated, and completed by the Federal Reserve Bank), and such letter of transmittal or draft certificate of deposit must, in all cases, make such specification as shall be required of postmasters by the Postmaster General, and by the instructions appearing on the certificate. The depository postmaster should stamp on the face of each check deposited the words, "This check is in payment of an obligation to the United States and must be paid at par. No protest," with his name and title. The Federal Reserve Bank will make an effort to collect every check on these terms. If the bank on which a check is drawn refuses to pay it at par, it will be returned to the postmaster in the same manner as a bad check. All checks forwarded by postmasters to the Federal Reserve Bank should be endorsed:

Pay to the order of the Federal Reserve Bank of .....
(Insert name of city in which Federal Reserve Bank, not branch, is located.)

with appropriate statement showing whether the deposit is made on account of surplus postal funds, surplus money-order funds, or receipts from sales of War-Savings securities. The checks must, in all cases, be forwarded by official registered mail. Inasmuch as the indorsement is specific, it is not necessary that the checks be insured. Postmasters must, however, retain a record of the checks forwarded so that if any checks are lost, payment may be immediately stopped and duplicates secured. When transmitting the checks to the Federal Reserve Bank, the post-

master should request the Federal Reserve Bank to issue a certificate of deposit or the appropriate form in his name, and to make disposition of the certificates in the set in accordance with the instructions which appear on the certificate.

FOR SPECIAL ATTENTION OF OTHER DEPOSITORS OF PUBLIC MONEYS.

16. *Deposit of checks with Federal Reserve Banks and branches.*—All checks received by other depositors of public moneys, whether or not drawn on banks and trust companies in the same city with the depositor, including checks for deposit to the official credit of the depositor with the Treasurer of the United States (other than checks drawn on the Treasurer of the United States for deposit to the official credit of the depositor, which shall be deposited direct with the Treasurer), shall be forwarded for deposit each day, unless otherwise specifically instructed by the Secretary of the Treasury, to the Federal Reserve Bank of the district in which the depositor's head office is located (or, in case the head office is located in the same city with a branch Federal Reserve Bank, to such branch Federal Reserve Bank): *Provided, however,* That depositors located in the District of Columbia shall make deposits hereunder direct with the Treasurer of the United States: *And provided further,* That other depositors may in special cases make deposits hereunder with the Treasurer of the United States direct. Specific instructions may be given by the Secretary of the Treasury in certain instances for the deposit of checks with Federal Reserve Banks of other districts, and branches thereof. Checks forwarded to the Federal Reserve Bank in accordance herewith must be accompanied by a letter of transmittal or a draft certificate of deposit (to consist of a full set, in proper form, to be signed, dated, and completed by the Federal Reserve Bank), and such letter of transmittal or draft certificate of deposit must in all cases make such specification of the deposit as shall be required of the officer making the deposit. The depositor should stamp on the face of each check deposited the words, "This check is in payment of an obligation to the United States and must be paid at par. No protest," with his name and title. The Federal Reserve Bank will make an effort to collect every check on these terms. If

ıe bank on which a check is drawn refuses to pay it at ar, it will be returned to the depositor in the same manner s a bad check. All checks forwarded by the depositor to ıe Federal Reserve Bank should be indorsed:

Pay to the order of the Federal Reserve Bank of .....
nsert name of city in which Federal Reserve Bank, not branch, is located.)

ith appropriate statement showing the specific account or which the deposit is made. The checks must, in all ases, be forwarded by registered mail. Inasmuch as the ndorsement is specific, it is not necessary that the checks e insured. Depositors must, however, retain a record of ıe checks forwarded, so that if any checks are lost payment ay be immediately stopped and duplicates secured. Nec-ssary expenses for postage and registration charges should e borne by such appropriation as may be available, and ıould not in any event be deducted from the amount of the eposit. If the depositor has no appropriation available pay such charges, he should make prompt report of the cts to the Secretary of the Treasury, Division of Public oneys, and request instructions. When transmitting the ıecks to the Federal Reserve Bank, the depositor should equest the Federal Reserve Bank to issue a certificate of eposit on the appropriate form in his name, the certificates the set to be disposed of in accordance with the instruc-ons which appear on the certificate.

17. *For special attention of officers of United States urts and United States attorneys.*—United States attor-eys, marshals, and clerks of United States courts, who re-eive public moneys accruing to the United States from nes, penalties, and forfeitures, fees, costs, forfeitures of ecognizances, moneys arising from unclaimed wages and ffects of seamen that have remained in the registry of the urts for more than six years, unclaimed moneys remain-g in court registry five years or longer, debts due the nited States, interest on such debts, sales of public prop-rty, or from any other sources, except as stated below, ill deposit the same in accordance with the foregoing aragraphs. Moneys collected in cases for violation of ustoms, navigation, equipment of motor boats, steamboat-spection, immigration and Chinese exclusion laws should e paid to the collector of customs in the district or port which the case arose. Fines for importation of opium

or having opium in possession under act of February 9, 1909, amended January 17, 1914, should also be paid to the collector of customs. Moneys collected in criminal cases under the internal revenue laws, including fines for making smoking opium under law of January 17, 1914, or under the anti-narcotic act of December 17, 1914, should be paid to the collector of internal revenue in the district in which the case arose. But fines arising from violation of section 240, Criminal Code, should be deposited by the clerk of court collecting same to the credit of the Treasurer of the United States. Moneys collected as damages on account of trespass on the national forests should be paid to the fiscal agent of the forest service district in which the case arose. Fines and costs should be deposited to the credit of the Treasurer of the United States. Fines collected under sections 52 and 53, Criminal Code (setting fire to timber on public lands or failing to extinguish same), should be paid to the proper county officer for the public school fund of the county where the land is situated. Costs should be deposited to the credit of the Treasurer of the United States. Moneys collected in Indian suits involving rentals, leasing, damages, etc., of Indian property or allotments for use of the particular Indian owners, should be paid to the disbursing officer for the agency having jurisdiction over them. Costs should be deposited to the credit of the Treasurer of the United States. Moneys (including costs) collected in civil or criminal post-office cases should be transmitted to the Solicitor of the Treasury, by draft or check, made payable to the order of the Treasurer of the United States.

FOR SPECIAL ATTENTION OF FEDERAL RESERVE BANKS.

18. *General Provisions.*—Federal Reserve Banks and branches will be expected to remain open during usual banking hours for the purpose of receiving deposits hereunder. Unless and until otherwise instructed by the Secretary of the Treasury, Federal Reserve Banks and branches will not receive deposits by postmasters or other Government officers for credit in their official disbursing accounts maintained elsewhere than with the Treasurer of the United States, nor deposits made by United States courts and their officers, unless for the depositor's credit through the account of the Treasurer of the United States with the Federal Reserve Bank or branch.

19. *Internal revenue checks.*—Federal Reserve Banks are requested, where possible, to give immediate credit in the Treasurer's general account and issue certificate of deposit for the full amount of all checks received from collectors of internal revenue pursuant to this circular. In the event that any checks for which a certificate of deposit has been given are returned to the Federal Reserve Bank as unpaid for any reason, the collector should be promptly notified and the check or checks should be held in suspense for a few days while the collector makes an effort to collect the amount. If he fails to make collection within thirty days, the check or checks should be returned to the collector and his receipt taken therefor, on the reverse of Form N, copy attached. This receipt must show the date, number, and amount of each certificate of deposit in which the amount of the unpaid check (or checks) was included, and the class of the deposit, as Income and Profits Taxes, or Miscellaneous Internal Revenue. The Federal Reserve Bank, upon obtaining such receipt from the collector, will immediately charge the amount, with appropriate description, in its current transcript of the Treasurer's account on Form 17, and forward therewith in support of the entry the receipt given by the collector with a debit voucher, both on Form N, copy attached, a supply of which will be forwarded by the Treasury Department to each Federal Reserve Bank for this purpose. In the event that any checks for which a certificate of deposit has been given are lost after deposit, the collector should be promptly notified and the items held in suspense for not exceeding thirty days while the collector endeavors to have payment on the lost check stopped and to secure another check or cash in lieu of the original check. If the taxpayer refuses or neglects to make prompt payment, the collector will proceed as in the case of a delinquent taxpayer. If at the expiration of thirty days the matter has not been satisfactorily adjusted, the Federal Reserve Bank should make full report to the Secretary of the Treasury, Division of Public Moneys, and request specific instructions before making any charges for the lost item in the Treasurer's account. Checks received from collectors of internal revenue for which the Federal Reserve Bank is not willing to give immediate credit should be credited by the Federal Reserve Bank in a special collection account, for a period not in excess of five days, and when collection has been made or the five-day period has

elapsed, the collection account should be charged and the Treasurer's account credited, and a certificate of deposit should be issued in the usual manner, unless the check has been returned unpaid. If a check deposited in the collection account should be returned unpaid, and no certificate of deposit has been issued therefor, it should be returned to the depositor and the amount charged to the collection account. Federal Reserve Banks are requested to use great care in observing the collector's classification of deposits of internal revenue collections, and in specifying upon the face of certificates of deposit on Form 15 (National Banks) deposits of "Income and Profits Taxes" separate and distinct in each case from deposits of Miscellaneous Internal Revenue Collections (formerly called "Ordinary"). In this connection Federal Reserve Banks will observe that checks forwarded in the separate package marked "Internal Revenue Collections" may contain items in payment of income and profits taxes as well as miscellaneous internal revenue collections.

20. *Customs checks.*—Federal Reserve Banks are requested, where possible, to give immediate credit in the Treasurer's general account and issue certificate of deposit for the full amount of all checks received from collectors of customs pursuant to this circular. In the event that any checks for which a certificate of deposit has been given are returned to the Federal Reserve Bank as unpaid for any reason, the collector should be promptly notified and the check or checks should be held in suspense for a few days while the collector makes an effort to collect the amount. If he fails to make collection within a reasonable time, the check or checks should be returned to the collector and his receipt taken therefor, on the reverse of Form N, copy attached. This receipt must show the date, number, and amount of each certificate of deposit in which the amount of the unpaid check (or checks) was included, and the class of the deposit, as Customs, or the like. The Federal Reserve Bank, upon obtaining such receipt from the collector, will immediately charge the amount, with appropriate description, in its current transcript of the Treasurer's account on Form 17, and forward therewith in support of the entry the receipt given by the collector with a debit voucher, both on Form N, copy attached, a supply of which will be forwarded by the Treasury Department to each Federal Re-

serve Bank for this purpose. In the event that any checks for which a certificate of deposit has been given are lost after deposit, the collector should be promptly notified and the items held in suspense for not exceeding thirty days while the collector endeavors to have payment on the lost check stopped and to secure another check or cash in lieu of the original check. If at the expiration of thirty days the matter has not been satisfactorily adjusted, the Federal Reserve Bank should make full report to the Secretary of the Treasury, Division of Public Moneys, and request specific instructions before making any charges for the lost item in the Treasurer's account. Checks received from collectors of customs for which the Federal Reserve Bank is not willing to give immediate credit should be credited by the Federal Reserve Bank in a special collection account for a period not in excess of five days, and when collection has been made, or the five-day period has elapsed, a certificate of deposit should be issued in the usual manner, unless the check has been returned unpaid. Federal Reserve Banks are requested to use great care in observing the collector's classification of deposits of Customs collections, and in specifying upon the face of certificates of deposit on Form 1¾ (National Banks) deposits representing collections for the Treasury Department, Department of Commerce, and Department of Labor, separate and distinct from each other, and to make such further specification within each department as may be indicated by the collector.

21. *Other checks.*—Federal Reserve Banks are requested, where possible, to give immediate credit in the Treasurer's general account and issue certificate of deposit for the full amount of all other checks received from depositors of public moneys pursuant to this circular. In the event that any checks for which a certificate of deposit has been given are returned to the Federal Reserve Bank as unpaid for any reason, or are lost after deposit, the depositor should be promptly notified and the item or items should be held in suspense for not exceeding thirty days while the depositor makes an effort to collect the amount. If he fails to make collection within this time, the Federal Reserve Bank should make full report to the Secretary of the Treasury, Division of Public Moneys, and request specific instructions. The Federal Reserve Bank will not, without further authority therefore, charge

the Treasurer's account with the amount of such checks. Checks received from such depositors for which the Federal Reserve Bank is not willing to give immediate credit should be credited by the Federal Reserve Bank in a special collection account, for a period not in excess of five days, and when collection has been made or the five-day period has elapsed, a certificate of deposit should be issued in the usual manner, unless the check has been returned unpaid. Federal Reserve Banks are requested to use great care in observing the depositor's classification of deposits, and in specifying the classes of deposits upon the face of certificates of deposit on the appropriate form.

22. *Checks drawn on banks outside district.*—Checks received by Federal Reserve Banks in accordance with this circular which are drawn on banks in other Federal Reserve districts should be collected in the usual manner and should not be charged in the Treasurer's general account as transfers of funds to other Federal Reserve Banks.

FOR SPECIAL ATTENTION OF ASSISTANT TREASURERS OF THE UNITED STATES.

23. Collectors of internal revenue, collectors of customs, and depository postmasters are not authorized to make deposits hereunder with Assistant Treasurers of the United States. Inasmuch as there is a Federal Reserve Bank or branch located in every city except Washington in which an Assistant Treasurer is located, it is expected that so far as possible all deposits of public moneys will be made with the Federal Banks or branches rather than with Assistant Treasurers. Deposits on account of the five per cent redemption funds shall be made until further notice, with the Treasurer or an Assistant Treasurer of the United States.

FOR SPECIAL ATTENTION OF NATIONAL BANK DEPOSITARIES.

24. *General provisions.*—National bank depositaries are not authorized to maintain any collection account for deposits of public moneys, but are required to give immediate credit in the Treasurer's account and to issue certificate of deposit for the full amount of all public moneys deposited with them for credit in the Treasurer's account in accordance with this circular. Except pursuant to specific instruc-

tions to that effect from the Secretary of the Treasury, no deposits of checks will be made hereunder with National bank depositaries for credit to the account of the Treasurer of the United States.

25. *Excess balances.*—National bank depositaries, whenever they hold funds to the credit of the Treasurer of the United States in excess of the authorized balance, shall make immediate transfer of such excess funds to the Treasurer or an Assistant Treasurer of the United States, or to the Federal Reserve Bank of the district, or, in special cases, to branches of Federal Reserve Banks. National bank depositaries, whenever they hold funds to the credit of other Government officers, pursuant to paragraph 27 hereof, in excess of the collateral value of the security deposited therefor, shall promptly report the facts to the Secretary of the Treasury, Division of Public Moneys, and deposit additional security to cover such deposits.

26. *Collateral security for deposits with regular National bank depositaries.*—From the date of this circular, and until further notice, securities of the following classes, and no others, will be accepted as security for deposits of public moneys with regular National bank depositaries, and at the rates below provided:

(a) Bonds, notes and Treasury certificates of indebtedness of the United States, of any issue, including outstanding interim certificates or receipts for payments therefor; all at par.

(b) Bonds of the Federal Land Banks, bonds of the War Finance Corporation, bonds of Porto Rico and the District of Columbia, and bonds and certificates of indebtedness of the Philippine Islands; all at par.

(c) The 3½ per cent bonds of the Territory of Hawaii at 90 per cent of market value; and other bonds of said Territory at market value, not to exceed par.

All securities to be deposited as collateral security for such deposits must be deposited with the Treasurer of the United States. On or before June 30, 1920, National bank depositaries will be required to substitute securities of the classes above described for all securities not falling within said classes deposited with the Treasurer of the United States as security for such deposits.

27. *Court and post-office funds, etc.*—National bank depositaries designated with a maximum qualification for the sole purpose of receiving deposits made by United States courts and their officers, by postmasters for credit to their official disbursing accounts, and by other Government officers authorized to maintain disbursing accounts elsewhere than with the Treasurer of the United States are not authorized to receive deposits for credit to the account of the Treasurer of the United States. Such depositaries are required to forward to the Treasurer of the United States at the end of each week, and at the end of each month, a report on Form 17 (National Banks), showing the aggregate amounts of such deposits, and to the Secretary of the Treasury, Division of Public Moneys, at the end of each week, and at the end of each month, a report on Form 7 (National Banks), showing in detail the deposits to the credit of the local postmaster, the United States court or its officers, and other authorized special accounts. Bankruptcy funds and postal savings deposits should not be included in these reports.

28. *Interest on deposits.*—Each National bank depositary will be required to pay interest at the rate of 2 per cent per annum on daily balances, including deposits received pursuant to paragraph 27 hereof. Interest will be calculated on an actual day's basis, and shall be paid semiannually on January 1 and July 1 in each year, 1 per cent for each six-months' period.

PAYMENT OF GOVERNMENT WARRANTS AND CHECKS.

29. *Federal Reserve Banks and branches.*—Federal Reserve Banks and branches shall make arrangements to cash Government warrants and checks drawn on the Treasurer of the United States for disbursing officers of the War Department and Navy Department, and other Government officers, provided that satisfactory identification of the officer shall be furnished. The Treasurer will upon special request advise Federal Reserve Banks and branches as to the balances to the credit of such officers. Each Federal Reserve Bank and branch will cash Government warrants and checks drawn on the Treasurer of the United States when they are presented and properly indorsed by responsible incorporated banks and trust companies who guarantee all prior indorsements thereon, including the indorse-

ment of the drawer when the check is drawn in his favor. Warrants and checks cashed by Federal Reserve Banks and branches shall be charged to the account of the Treasurer of the United States, subject to examination and payment by the Treasurer. Federal Reserve Banks and branches will not be expected to cash Government warrants and checks presented direct to the bank by the general public.

30. *National bank depositaries and Assistant Treasurers.*—Each regular National bank depositary with an authorized balance to the credit of the Treasurer of the United States, and each Assistant Treasurer of the United States will cash Government warrants and checks drawn on the Treasurer of the United States when they are presented and properly indorsed by responsible holders who guarantee all prior indorsements thereon, including the indorsement of the drawer when the check is drawn in his favor. Warrants and checks so cashed by Assistant Treasurers shall be charged to the account of the Treasurer of the United States, subject to examination and payment thereof by the Treasurer. Regular National bank depositaries are not required to charge Government warrants and checks cashed by them in the account of the Treasurer of the United States, except in cases where checks drawn on the Treasurer of the United States are deposited for the official credit of the drawer or the credit of other Government officers in the account of the Treasurer of the United States and in cases where cash is furnished to a Government officer upon the warrant or check for pay-roll or other expenditures.

31. *Payment by Treasurer.*—The Treasurer of the United States reserves the usual right of the drawee to examine, when received, all Government warrants and checks cashed by Assistant Treasurers, Federal Reserve Banks and branches, and National bank depositaries, and to refuse payment thereon. Three years after the close of the fiscal year (June 30) in which they are drawn, warrants and disbursing officer's checks are *not* payable by the Treasurer of the United States, but should be sent to the Secretary of the Treasury, Division of Public Moneys, for payment from the "Outstanding liabilities" appropriation.

OTHER PROVISIONS.

32. All previous regulations and instructions inconsistent herewith are hereby superseded, including, so far as inconsistent herewith, the provisions of Treasury Department Circulars No. 5, dated April 6, 1916, No. 105, dated December 27, 1917, and No. 144, dated May 20, 1919.

33. Except as herein otherwise specifically provided, nothing contained in this circular shall be deemed to affect deposits by postmasters to the credit of their official disbursing accounts, the deposit of court funds by United States courts and their officers, or the deposit of Postal Savings funds, in cases where such deposits are not for credit by the depositary in the account of the Treasurer of the United States. Unless specifically extended thereto by the Secretary of the Treasury, nothing contained in this circular shall be deemed to apply to or govern the deposit of public moneys in Federal land banks or joint stock land banks under the act approved July 17, 1916, as amended.

34. The provisions of this circular do not apply to or govern the deposit of public moneys or the payment of Government warrants and checks outside of the continental United States, except to the extent specifically extended by the Secretary of the Treasury from time to time.

35. The Secretary of the Treasury may withdraw or amend at any time or from time to time any or all of the provisions of this circular.

CARTER GLASS,
Secretary of the Treasury.

Form N.

[Obverse.]

Group as paid checks.	First sort General ledger section.	Second sort Symbol .....

Treasurer's office. DEBIT VOUCHER. Form N.

....., 192..

..... of .....
(Name of Federal Reserve Bank or branch.)

Debit has been made this day in transcript of Treasurer's general account for uncollectible checks deposited by ..... in payment of ..... and returned to the depositor as unpaid, as per receipt on reverse hereof, in the amount of $.....

.....
Cashier.

NOTE.—Forward with transcript in support of entry.

[Reverse.]

Received ....., 192.., from .....
(Name of Federal Reserve Bank or branch.)

of ....., uncollectible checks amounting to $....., which amount was included in certificates of deposit issued by said bank as follows:

Certificate No.	Date of certificate	Total amount of certificate.	Classification of deposit (as income and profits taxes, miscellaneous internal revenue, customs, miscellaneous receipts, official checking account, surplus postal funds, surplus money-order funds, War-Savings securities, etc.).	Amount of uncollectible checks included in each certificate.

Total, $.....

.....
(Name and title of depositor.)

..... District of .....

April 4, 1913.

President,
District National Bank,
Washington, D. C.

Sir:

By direction of the Secretary the designation of your bank is hereby changed from that of a temporary depositary to a depositary for regular purposes and your authorized balance will be fixed at $50,000 to be secured by a sufficient amount of any U. S. bonds, Philippine, Porto Rican, District of Columbia, Hawaiian, Philippine Railway Company and Manila Railroad Company bonds which you will forward to the Treasurer of the United States.

Respectfully,

JNO. SKELTON WILLIAMS,
Assistant Secretary.

EBS

COPY

November 15, 1917.

Cashier,
District National Bank,
Washington, D. C.

Sir:

By authority conferred upon the Secretary of the Treasury by the Act of September 24, 1917, the District National Bank, Washington, D. C., is hereby designated as a special depositary of public moneys, and under this designation is authorized to receive only deposits on account of its purchase of Treasury certificates of indebtedness and subscription payments for Liberty Loan bonds. Such deposits as may be made with your bank from time to time shall not exceed in the aggregate at any one time $300,000.

A "War Loan Deposit Account" should be opened on the books of your bank and all moneys deposited thereunder should be credited to "The Federal Reserve Bank of Richmond, Fiscal Agent of the United States."

Details as to the method of handling this account will be ade known to you by the Federal Reserve Bank of your strict.

By direction of the Secretary.

Respectfully

(Signed) R. C. LEFFINGWELL,
Assistant Secretary.

March 24, 1920

COPY

ashier,
istrict National Bank,
Vashington, D. C.

ear Sir:

The Government is borrowing on Treasury certificates indebtedness at rates of interest varying from 4¼% to ¼%. The Treasury, therefore, has no surplus funds to ave with National bank depositaries at 2% interest, ex- pt where it is necessary to maintain balances with such epositaries for the performance of some essential Gov- nment business. Having discontinued all national bank epositaries in cities where Federal Reserve Banks and anch Federal Reserve Banks are located and equipped transact the Government's business, the Treasury feels at it must, as a measure of consistency and of adminis- ative economy, discontinue national bank depositaries in e city of Washington where the office of the Treasurer of e United States is located.

You will, accordingly, please transfer on or before arch 31st to the Treasurer of the United States all funds deposit with your bank to the credit of the Treasurer's eneral Account, and from that date you will accept no posits to the credit of that account.

After the transfer of funds has been made as directed, u should forward to this office and to the Treasurer of e United States a final transcript reporting the transfer have been made. There should be attached to the tran- ript furnished this office a statement sworn to by the esident and Cashier of your bank to the effect that:

"The balance above reported as transferred comprised the entire indebtedness of this bank for public moneys on deposit to the credit of the Treasurer of the United States."

If your bank has on deposit any funds to the credit of other Government officers than the Treasurer of the United States, excluding bankruptcy funds and postal savings funds, please advise, this office immediately and you will be instructed as to the disposition of those funds.

Upon payment of the interest due and the receipt by the Treasurer of the United States of a Resolution of your Board of Directors authorizing the withdrawal and disposition of the collateral now lodged with the Treasurer to secure the public deposit, together with his receipt which you now hold for said collateral, the securities in question will be released and the District National Bank of Washington, D. C. discontinued as a depositary of public moneys.

The above discontinuance, however, does not affect the designation of your bank as a special depositary under the provisions of Department Circular No. 92.

By direction of the Secretary.

Respectfully,

(Signed) R. C. LEFFINGWELL,
Assistant Secretary of the Treasury.

EDB/cp

COPY

November 5, 1920.

H. L. Offutt, Jr., Esquire,
Cashier, District National Bank,
Washington, D. C.

Dear Sir:

I received your letter of October 30th, and have also been advised by the Treasurer of the United States of the deposit by your bank of Liberty Bonds in the sum of $5,000.

Accordingly, the District National Bank, of Washington, D. C., has been designated a limited depositary of public moneys with authority to hold not to exceed $5,000 of funds to the credit of the United States Marshal. This account should be reported to the Division of Deposits on Form 7 on Saturday of each week and on Line 12, Form 17, to the Treasurer of the United States on Saturday of each week and on the last day of the month. The necessary supply of forms, upon which to render reports, has been forwarded to you under separate cover.

Your attention is especially called to paragraphs 25, 26, 27 and 28 of Department Circular No. 176, copy enclosed, which indicate the requirements of the Treasury as to the handling of the account in question.

Very truly yours,

(Signed) R. A. CROXTON,
Chief, Division of Deposits.

Enclosure (1)
EDB/lt

January 23, 1930.

H. L. Offutt, Jr., Esq.,
Cashier, District National Bank,
Washington, D. C.

Dear Sir:

The District National Bank, Washington, D. C., has been discontinued as a limited depositary of public moneys, effective January 31, 1930, inasmuch as that bank has not during recent years maintained an active account under this designation.

In order that the collateral now deposited with the Treasurer of the United States as security for Goverment accounts formerly maintained on your books may be released, you should execute the enclosed resolution and forward it to the office of the Treasurer of the United States, Division of Securities, accompanied by Treasurer's receipts covering the collateral to be withdrawn.

It is noted that your bank is reporting to this office on Form 7 the balance of the "Comptroller of the Currency, Unclaimed Dividends, Insolvent National Banks". The discontinuance of your bank as a limited depositary does

not affect that account and it is not necessary for you to report to this office.

By direction of the Secretary:

Very truly yours,

(Signed) E. D. BATCHELDER,
Chief, Division of Deposits

(1 enclosure)

October 21, 1933.

Cashier,
District National Bank,
Washington, D. C.

Dear Sir:

The designation of the District National Bank of Washington, D. C., as a special depositary of public moneys under the Act of Congress approved September 24, 1917, as amended, and in accordance with the provisions of Treasury Circular No. 92, revised February 23, 1932, as supplemented, has been canceled, inasmuch as the bank has been taken over by the Hamilton National Bank, Washington, D. C.

By direction of the Secretary:

Very truly yours,

(Signed) E. D. BATCHELDER,
Chief, Division of Deposits.

Comptroller Tracewell's Decision, 11 C. D. 36.

CONSTRUCTION OF ACTS OF CONGRESS RELATIVE TO THE BUILDING OF THE PANAMA CANAL.

The provision in section 87 of the act of January 12, 1895, requiring all printing for the executive and judicial departments to be done at the Government Printing Office has no application to printing for the Isthmian Canal Commission.

Under the power conferred upon him by the act of June 28, 1902, the President is authorized to rent offices in the District of Columbia for the use of the Isthmian Canal Commission, notwithstanding the provision in the act of

March 3, 1877, that no contract should be made for the rent of any building, or part of building, in the District of Columbia unless appropriated for in terms.

The allotment or assignment of pay by employees of the Isthmian Canal Commission is not authorized.

The provision in section 3709, Revised Statutes, relative to advertising for supplies and the letting of contracts is applicable to work done in connection with the construction of the canal.

The local revenues of the Isthmian Canal Zone are not such moneys as are required to be accounted for to the Treasury Department, but said revenues are to be accounted for in such manner and under such rules and regulations as the President and the Canal Commission shall prescribe, a report of the same being made to the President and to Congress, as required by the act of June 28, 1902.

(COMPTROLLER TRACEWELL TO THE CHAIRMAN OF THE ISTHMIAN CANAL COMMISSION, JULY 26, 1904.)

I have received your letter of the 1st instant, wherein you say:

"After conference with the Secretary of War with reference to future disbursements under the direction of this Commission, I respectfully request that you give a decision upon the following points:

"(1) In conducting the various branches of work, large quantities of printed books and blanks will be required for use in the Commission's main and subsidiary offices on the Isthmus. Does the fact that a portion of these will also be used in the Washington branch office require them to be obtained from the Government Printing Office, under section 87, act of January 12, 1895?

"(2) Does the act of June 28, 1902, authorize rent of offices in the District of Columbia within the meaning of the act of March 3, 1877? (19 Stat., 370.)

"(3) In case of the adoption by the Commission of a system of allotting pay, by employees on the Isthmus, similar to that in use in the Navy, would the treasurer of the Commission be authorized to pay allotments as made?

"(4) Is the Commission required to advertise for bids for supplies for use on the Isthmus, or in its branch office

at Washington, in accordance with section 3709, Revised Statutes?

"(5) Attention is invited to the last paragraph, page 8, of the President's letter of May 9, 1904, addressed to the Secretary of War (copy herewith), which states:

"'The necessary expenses incurred by the Commission in carrying on the government of the Canal Zone will be defrayed from the local revenues as far as the said revenues may be sufficient, and the remainder will be met from the appropriation made by the fifth section of the act of Congress approved June 28, 1902.'

"Are the revenues from the government of the Canal Zone public moneys of the United States? And should the receipts and disbursements of the same be accounted for to the Treasury Department?"

The questions presented by you will be answered in the order named.

1. By section 87 of the act of January 12, 1895 (28 Stat., 622), it is provided that

> "All printing, binding, and blank books for the Senate or House of Representatives and for the Executive and Judicial Departments shall be done at the Government Printing Office except in cases otherwise provided by law."

It can not be said that the Isthmian Canal Commission is an executive department of the Government within the meaning of the act just quoted. Nor is it a branch or bureau of any of the Executive Departments, although, for administrative purposes, it has been placed under the supervision of the Secretary of War by the President in his letter of May 9, 1904. It is a separate and distinct establishment authorized and created by Congress for the performance of certain work and appropriation made for its necessary expenses. The War Department is not required to furnish, or cause to be done, such printing or binding or books as may be necessary for the use of the Commission, and such printing or binding or books as are furnished for use of the Commission could not therefore be regarded as being furnished for the War Department or any of its bureaus.

m therefore of opinion that the provisions of section
ove quoted do not apply to the printing to be done
our Commission, even though part of said work is to
ed at your branch office in Washington. (See MS.
vol. 29, p. 567; 10 Comp. Dec., 368; 3 Comp. Dec., 127;
lecision of May 11, 1904, addressed to Col. Charles H.
ple, chief disbursing officer of the War College.)

In answer to your second question, it may be stated as
eral proposition that the laws of the United States
to the use and disbursement of the money appropri-
by Congress for building the canal, unless the provi-
of the later statutes relating to the canal are re-
ant to the earlier general laws, in which event, of
e, the earlier laws must give way to the later ones.

e act of March 3, 1877 (19 Stat., 370), provides:

"* * * hereafter no contract shall be made for the
ent of any building, or part of any building, to be
sed for the purposes of the Government in the Dis-
rict of Columbia, until an appropriation therefor
hall have been made in terms by Congress, and that
his clause be regarded as notice to all contractors or
essors of any such building or any part of building."

is act is plain and unambiguous, and would prevent
enting of any building or part thereof in the District
lumbia for the use of the Commission, unless author-
erefore can be found in later acts.
tion 7 of the act of June 28, 1902 (32 Stat., 483-484)
des:

"The President shall cause to be provided and as-
igned for the use of the Commission such offices as
nay, with the suitable equipment of the same, be nec-
ssary and proper, in his discretion, for the proper dis-
harge of the duties thereof."

is act vests in the President, a discretion, without lim-
n, to provide proper and necessary offices for the use
e Commission. To hold that the act of March 3, 1877,
, applies to the renting of offices for the Commission
e District of Columbia, would be to say that said act
impose a limitation on the discretion of the President,

which is not found in the act of June 28, 1902, supra. The discretion there vested in the President is thus repugnant to the provisions of the act of 1877, and therefore the former act must yield to that of 1902.

Because of this I conclude that the President is authorized to cause the renting of offices for the use of the Commission in the District of Columbia, if he chooses to do so.

3. In answer to your third question, as to the authority of employees of the Commission to allot or assign their pay, and the treasurer of the Commission to pay the same to the allottee or assignee, I have to say that such a practice seems to be in contravention of section 3477 of the Revised Statutes, and I find nothing in the law relating to the Canal Commission which would take the case out of the operation of said section.

Therefore I am of the opinion there is no authority to allot or assign the pay in question.

4. In answer to your fourth question, I have to say that I find nothing in the laws relating to the canal which would appear to supersede the provisions of section 3709, Revised Statutes, in regard to advertising for supplies and the letting of contracts for the work to be done on the canal. Therefore the provisions of said section apply to the work done on the canal. Even if there were doubts on this point, such doubts would be set at rest by the following paragraph in the letter of the President of May 9, 1904, so far at least as engineering and construction work is concerned:

> "To make and cause to be executed, after due advertisement, all necessary contracts for any and all kinds of engineering and construction work."

5. Your question five is more difficult of solution. The instructions of the President stated by you relate to the carrying on of the government of the Canal Zone and the use of the *local revenues* of said zone. It is not wholly clear just what was meant by the words "local revenues of the zone." It would seem, however, that what was contemplated were moneys derived from the various sources of taxation, etc., local to the zone, as distinguished from miscellaneous receipts which might be collected as incident to the direct operation of building the canal and the use of a Congressional appropriation. I believe this is the correct

construction of the language used by the President, and the answer will be predicated upon that view.

Article 2 of the treaty with the Republic of Panama proclaimed by the President of the United States February 26, 1904, provides:

> "The Republic of Panama grants to the United States, in perpetuity, the use, occupation, and control of a zone of land and land under water, for the construction, maintenance, operation, sanitation, and protection of said canal, of the width of ten miles, extending to the distance of five miles on each side of the center line of the line of the canal to be constructed. * * *"

Article 3 of the same treaty provides:

> "The Republic of Panama grants to the United States all the rights, power, and authority within the zone mentioned and described in article 2 of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said article 2, which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located, to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority."

The United States has thus become vested in perpetuity with the use, occupation, and control of the Canal Zone, and is now authorized to exercise all the sovereign powers in and over said zone which were inherent in the Republic of Panama prior to the release, waiver, and transfer thereof to the United States by the terms of the treaty.

Section 2 of the act of April 28, 1904 (33 Stat., 429), provides:

> "That until the expiration of the Fifty-eighth Congress, unless provision for the temporary government of the Canal Zone be sooner made by Congress, all the military, civil and judicial powers as well as the power to make all rules and regulations necessary for the government of the Canal Zone, and all the rights, powers, and authority granted by the terms of said treaty to the United States shall be vested in such person or persons and shall be exercised in such manner as the

President shall direct for the government of said Zone and maintaining and protecting the inhabitants thereof in the free enjoyment of their liberty, property, and religion."

By the terms of this section Congress has for the time being specifically authorized and directed that all the rights, powers, and authority which accrued to the United States under the treaty in question be vested in and exercised by the President and such persons as he may select. No restrictions or limitations are imposed, and until Congress, by express legislation, shall have prescribed the form of government of said Zone, the will and sound discretion of the President and his Commission will control, subject only to the general spirit and purpose of the Constitution of the United States.

It must be borne in mind that Congress has not by any specific act extended the application of the Constitution and statutes of the United States to said territory. Some legislation must first be had to that effect before they can be made fully applicable to the Canal Zone.

In the case of *Downes* v. *Bidwell* (182 U. S., 244), the court said, quoting from the syllabus:

"Every function of the Government being thus derived from the Constitution, it follows that that instrument is everywhere and at all times potential in so far as its provisions are applicable."

The meaning of these words is, as I understand it, that the general spirit and purpose of the Constitution would be applicable in the Canal Zone.

In his concurring opinion in the case of *Downes* v. *Bidwell,* Mr. Justice Gray said:

"The civil government of the United States can not extend immediately, and of its own force, over territory acquired by war. Such territory must necessarily, in the first instance, be governed by the military power under the control of the President as commander in chief. Civil government can not take effect at once, as soon as possession is acquired under military authority, or even as soon as that possession is confirmed by treaty. It can only be put in operation by the

action of the appropriate political department of the Government, at such time and in such degree as that department may determine. There must, of necessity, be a transition period.

"In a conquered territory, civil government must take effect either by the action of the treaty-making power, or by that of the Congress of the United States.

• • • • • • •

"So long as Congress has not incorporated the territory into the United States, neither military occupation nor cession by treaty makes the conquered territory domestic territory, in the sense of the revenue laws. But those laws concerning 'foreign countries' remain applicable to the conquered territory until changed by Congress. Such was the unanimous opinion of this court, as declared by Chief Justice Taney, in *Fleming* v. *Page*, 9 Howard, 603, 617.

"If Congress is not ready to construct a complete government for the conquered territory, it may establish a temporary government which is not subject to *all* the restrictions of the Constitution."

It would seem from the logic of this decision that the local government of the Canal Zone must be vested in the President and the Commission mentioned, and that said zone is not a part of the United States within the full meaning of the Constitution and laws of the country. The local revenues of said zone must therefore be handled in accordance with such rules and regulations as the President and the Commission may authorize. It does not seem necessary to decide whether those revenues are, in a general sense, moneys of the United States, because I am of opinion that they are not such moneys of the United States as are required to be accounted for to the Treasury Department, but that the accounting for said *local* revenues must be done under such rules and regulations as the President and the Commission shall prescribe, a report of the same being made to the President and to Congress, as required by the act of June 28, 1902. (33 Stat., 483.)

Executive Order of Jan. 27, 1914.

To Establish a Permanent Organization for the Panama Canal.

By virtue of the authority vested in me, I hereby enact the following order, creating a permanent organization for the Panama Canal, under the Act of Congress "To provide for the opening, maintenance, protection and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912.

Section 1. The organization for the completion, maintenance, operation, government and sanitation of the Panama Canal and its adjuncts and the government of the Canal Zone shall consist of the following departments, offices and agencies, and such others as may be established by the Governor of the Panama Canal on the Isthmus or elsewhere with the approval of the President, all to be under the direction of the Governor, subject to the supervision of the Secretary of War.

Department of Operation and Maintenance.

There shall be a Department of Operation and Maintenance under the immediate supervision and direction of the Governor of the Panama Canal. This Department shall be charged with the construction of the Canal and with its operation and maintenance when completed, including all matters relating to traffic of the Canal and its adjuncts, and the operation and maintenance of beacons, lights and lighthouses; the supervision of ports and waterways, including pilotage; the admeasuring and inspecting of vessels, including hulls and boilers; the operation and maintenance of the Panama Railroad upon the Isthmus, including telephone and telegraph systems; the operation of locks, coaling plants, shops, dry-docks and wharves; office engineering, including meteorology and hydrography; the construction of buildings and sanitary and municipal engineering, including the construction and maintenance of drainage ditches, streets, roads and bridges.

Purchasing Department.

There shall be a Purchasing Department under the supervision and direction of the Governor. This department shall be charged with the purchase of all supplies, machinery or necessary plant.

Supply Department.

There shall be a Supply Department, under the supervision and direction of the Chief Quartermaster. This department shall store and distribute all material and supplies for use of the Panama Canal and of its employees; and for other departments of the Government on the Isthmus and their employees; and for vessels of the United States and for other vessels, when required. The Supply Department shall operate commissaries, hotels and messes; shall be in charge of the maintenance of buildings, the assignment of quarters and the care of grounds; shall recruit and distribute unskilled labor; and shall have charge of the necessary animal transportation.

Accounting Department.

There shall be an Accounting Department under the supervision and direction of the Auditor, with an assistant in the United States. The duties of the department shall include all general bookkeeping, auditing and accounting, both for money and property, costkeeping, the examination of payrolls and vouchers, the inspection of time books and of money and property accounts, the preparation of statistical data, and the administrative examination of such accounts as are required to be submitted to the United States Treasury Department; and the collection, custody and disbursement of funds for the Panama Canal and the Canal Zone. These same duties shall be performed for the Panama Railroad Company on the Isthmus when not inconsistent with the charter and by-laws of that Company. The department shall be charged with the handling of claims for compensation on account of personal injuries and of claims for damages to vessels. Within the limits fixed by law, the duties and financial responsibilities of the officers and employees charged with the receipt, custody, disbursement, auditing and accounting for funds and property shall be prescribed in regulations issued by the Governor, with the approval of the President. The Auditor shall maintain such a system of bookkeeping as will enable him to furnish at any time full, complete and correct information in regard to the status of appropriations made by Congress, the status of all other funds, and the amounts of net profits on all operations, which are to be covered into the Treasury as required by the Panama Canal Act.

Health Department.

There shall be a Health Department under the supervision and direction of the Chief Health Officer. This department shall be charged with all matters relating to maritime sanitation and quarantine in the ports and waters of the Canal Zone and in the harbors of the cities of Panama and Colon, and with land sanitation in the Canal Zone, and sanitary matters in said cities in conformity with the Canal Treaty between the United States and the Republic of Panama and existing agreements between the two governments thereunder, and all matters relating to hospitals and charities.

Executive Secretary.

There shall be an Executive Secretary who, under the direction of the Governor of the Panama Canal, shall be charged with the supervision of all matters relating to the keeping of time of employees; to postoffices, customs, taxes and excises, excepting the collection thereof; police and prisons, fire protection; land office; schools, clubs and law library; the custody of files and records; and the administration of estates of deceased and insane employees. He shall, in person or through one of his assistants, perform the duties of a Shipping Commissioner. He shall conduct all correspondence and communications between the authorities of the Canal Zone and the Government of the Republic of Panama and such other correspondence as may be given him in charge by the Governor. He shall have charge of the seal of the Government of the Canal Zone and shall attest such acts of the Government as are required by law to be performed and done under the seal.

The duties herein prescribed for the foregoing departments, offices and agencies will be assigned to divisions or bureaus thereunder by the Governor of the Panama Canal, as the necessities therefor arise. Each of the foregoing departments shall discharge such further duties as may be assigned to it from time to time by the Governor; and the Governor, with the approval of the President, may transfer from time to time specific duties from one department to another.

Section 2. The organization provided for in Section 1 shall be, in general, in accordance with the outline chart accompanying the memorandum of Jan. 27, 1914, entitled "Memorandum to accompany Executive Order of Jan. 27,

1914, providing for a permanent organization for the Panama Canal," and officers from certain departments shall be detailed in accordance with that memorandum.

Section 3. This order shall take effect from and after the 1st day of April, 1914, from which date the Isthmian Canal Commission, together with the present organization for the Panama Canal and the Canal Zone, shall cease to exist, in accordance with the terms of the above-mentioned Act of Congress.

WOODROW WILSON.

The White House,
January 27, 1914.

The Canal Record.
Official Publication of The Panama Canal
Volume VII.—No. 38.
August 27, 1913 to August 19, 1914.
Page 365.

Official Circulars.
Accounting Department.
The Panama Canal.
Office of the Governor.
Culebra, C. Z., April 1, 1914.

Circular #660-2:

Auditor of the Panama Canal.

1. The Auditor of The Panama Canal is charged with the immediate direction and control of accounting, and the auditing and settlement of claims for The Panama Canal and Canal Zone and for the Commissary Department of The Panama Railroad on the Isthmus. He has supervision and control over the acceptance of bonds, the methods of keeping records and accounts of receipts and disbursements of moneys received by all officers and agents of The Panama Canal and Canal Zone by virtue of their officers or positions, and the methods of safeguarding such moneys. He shall prescribe all forms for recording the receipt and disbursement of moneys and property and all forms necessary for use in accounting for money and property, except as otherwise prescribed in accordance with law. He is authorized, and it shall be his duty, to examine the books, contracts, rec-

ords, and accounts of money and property in the possession of all officers and agents of The Panama Canal and Canal Zone, and of the Commissary Department of the Panama Railroad on the Isthmus. He shall perform all the duties heretofore assigned to the Examiner of Accounts or to the Auditor of the Canal Zone Government, and the additional duties prescribed by the Executive Order of January 27, 1914.

Disbursements—Paymaster

2. The Paymaster is charged with the payment on the Isthmus of all moneys appropriated for The Panama Canal and expendable under the direction of the Governor. The Paymaster will make payments only on vouchers or pay rolls, time vouchers or pay receipts which have been examined and audited by the Auditor. All collections made by the Paymaster on the pay rolls shall be paid by him to the Collector upon the certificate of the Auditor specifying the amount and the source from which derived, except refundments of overpayments and amounts due The Panama Railroad Company for supplies or services rendered employees, and except other deductions authorized to be made and to be paid to other branches of the service, to contractors or other persons. All other duties performed by the Disbursing Officer of the Isthmian Canal Commission prior to April 1, 1914, will be performed by the Collector.

Receipts—Collector

3. The Collector shall perform all duties heretofore performed by the Treasurer of the Canal Zone and, in addition, shall collect or receive all amounts due The Panama Canal and Canal Zone. He shall transfer all cash received by him and not required for the performance of his duties, to the Paymaster. For the funds of The Panama Canal, he shall take the Paymaster's receipts; for Canal Zone, money order, postal savings bank, clubhouse, and other trust funds and security deposits, he shall take the draft of the Paymaster on the Treasurer of the United States and shall deposit same in depositories under the contracts entered into by the Secretary of War. He shall have such number of deputies or assistants as may be assigned to him. All moneys, records, and papers of the Treasurer of the Canal Zone, and all moneys, records, and papers of the Collector

of Revenues and his deputies, insofar as they relate to the collection of moneys, shall be transferred to the Collector of The Panama Canal.

4. The Collector will render an account for all public moneys of the United States received by him to the Auditor for the War Department, through the Auditor of The Panama Canal. The account will be forwarded to the Auditor of The Panama Canal within ten days after the close of each month, and will be forwarded by the Auditor of The Panama Canal to the Auditor for the War Department within ten days thereafter.

5. All amounts due The Panama Canal or Canal Zone will be collected by the Collector or his deputies whenever practicable. Bonded employees of the various departments and divisions designated by the Auditor may make collections for minor services or sales. In the performance of their duties in connection with receiving, handling, and refunding cash, such employees shall be subject to the direction of the Auditor. Such bonded employees shall issue receipts in triplicate, giving the original to the party making deposit and sending the duplicate to the Auditor.

6. All collections for The Panama Canal or Canal Zone will be remitted to the Collector, The Panama Canal.

7. Remittances should be made to the Collector at least once each week, and when the cash on hand amounts to $50, except that the retention of a larger balance may be specifically authorized by the Auditor.

8. All funds shall be remitted by registered mail with the original copy of remittance letter, the duplicate thereof being retained by the remitter. Receipt in favor of the remitter will be issued by the Collector as soon as a remittance is received.

9. All amounts greater than $50 deposited as security for the payment of supplies or rendition of services will be deposited with the Collector or his Deputies.

10. The Collector shall have the custody and issue, upon requisition approved by the Auditor, of coupon books, meal tickets, stamps, and similar money values.

11. All checks, drafts, money orders, or any form of remittance, except cash, should be made payable to "Collector,

The Panama Canal", and if otherwise made payable should be endorsed in his favor.

12. Monthly abstracts covering all receipts, remittances, all refunds, in detail, will be prepared and forwarded to the Auditor of The Panama Canal promptly at the close of each month, supported by all receipts issued or taken. Forms of such abstracts have been prepared and will be furnished all collecting officers, with full information, prior to the time it is necessary to render April accounts.

Responsibility of Employes.

13. All pay rolls, time vouchers, and pay receipts, and all vouchers and claims, bills, and accounts receivable of all kinds shall be examined, and audited and checked against the proper records, contracts, or other authorizations in the auditing divisions of the Accounting Department, and otherwise completed with the proper papers attached, prior to submission to the Collector or Paymaster for collection or payment.

14. Two signed copies of all contracts relating to the disbursement of public moneys will be forwarded to the Auditor as soon as executed, one for his office, and one for transmittal to the Auditor for the War Department.

15. All employes of The Panama Canal who examine, check, and verify the correctness and validity of pay rolls, time vouchers, and pay receipts, vouchers and claims, bills or accounts receivable, or any paper or record authorizing or necessary to support any collection or payment, shall be financially responsible for errors of calculation and any other errors apparent upon the face of the papers examined or checked by them, and for errors that would be apparent upon investigation of the personnel or other records available to them.

16. Employes who prepare pay rolls and time vouchers, and bills and accounts receivable in any form, shall be financially responsible for errors in preparation of such papers, due to failure to make the entry thereon correspond with the facts disclosed by time books, time rolls, rate and price authorizations, stock and price cards, and other records and papers in their office, or which may be available to them for comparison and checking; also, for errors in the deliv-

ery of pay receipts, time vouchers, coupon books, meal tickets, and other money values.

Employes required to give bond.

17. The following classes of employes on the Isthmus shall give bond to the United States for the faithful performance of their duties, in such form and in such amount as may be fixed by the Auditor, with the approval of the Governor, and with sureties satisfactory to the Auditor, except the Collector, the Paymaster, and the employes bonded to the Paymaster, and any others who may be required by law or specific instructions to give bond to the United States for the faithful performance of the same duties: (a) All employes of The Panama Canal who collect or disburse moneys of the United States, the Canal Zone, the Panama Railroad Company, or any other moneys by virtue of the offices or positions held by them. (b) Timekeepers who prepare time rolls, pay rolls, time vouchers, or pay receipts. (c) Employes having custody or authority to issue commissary or hotel coupon books, or meal tickets. (d) Storekeepers and others so acting who are the custodians of material and supplies, and property of the United States, the Canal Zone, or the Panama Railroad Company of a value in excess of a minimum amount which is held for issuance to departments. (e) Postmasters and postal clerks.

GEO. W. GOETHALS,
Governor.

EXECUTIVE ORDER OF SEPTEMBER 8, 1911.

ESTABLISHING THE POSTAL SAVINGS SYSTEM IN THE CANAL ZONE.

By virtue of the authority vested in me, I hereby establish the following Order for the Canal Zone:

Section 1. There is hereby established in the post-offices of the Canal Zone a postal savings system, to be operated without the payment of interest on the deposits under such rules and regulations as may be now or hereafter adopted.

Section 2. There is hereby created a Board of Trustees for the control, supervision, and administration of the postal savings depository offices designated and established under the provisions of this Order, and of the funds received as deposits at such postal savings depository offices by vir-

tue thereof. Said board shall consist of the Collector of Revenues of the Canal Zone, the Auditor of the Canal Zone Government, and the Treasurer of the Canal Zone, severally, acting ex officio, and shall have power to make all necessary and proper regulations for the receipt, transmittal, custody, deposit, investment, and repayment of the funds deposited at postal savings depository offices; the regulations above mentioned to be subject to the approval of the Chairman of the Isthmian Canal Commission.

Section 3. Said Board of Trustees is hereby authorized and empowered to designate such post-offices as it may select to be postal savings depository offices, and each and every post-office so designated by order of said Board is hereby declared to be a postal savings depository office within the meaning of this Order and to be authorized and required to receive deposits of funds from the public and to account for and dispose of the same, according to the provisions of this Order and the regulations made in pursuance thereof. Each postal savings depository office shall be kept open for the transaction of business during such hours as the Collector of Revenues shall direct.

Section 4. That accounts may be opened and deposits made in any postal savings depository established under this Order by any person of the age of ten years or over, in his or her own name, and by a married woman in her own name and free from any control or interference by her husband; but no person shall at the same time have more than one postal savings account in his or her own right.

Section 5. At least one dollar, or a larger amount in multiples thereof, must be deposited before an account is opened with a person depositing the same; and one dollar, or multiples thereof, may be deposited after such account has been opened. Postal savings deposits will be evidenced by postal savings certificates issued in fixed denominations of $1, $2, $5, $10, $20, $50, $100, each bearing the name of the depositor, the number of his account the date of issue, and the name of the depository office.

Section 6. Any depositor may withdraw the whole or any part of the funds deposited to his or her credit upon demand, and under such regulations as the Board of Trustees may prescribe.

Section 7. Postal savings funds received under the provisions of this Order shall be deposited with the Treasurer of the Canal Zone under such regulations as the Board of Trustees may prescribe.

Section 8. Postal savings depository funds shall be kept separate from other funds by postmasters and other officers and employees of the postal service, who shall be held to the same accountability under their bonds for such funds as for public moneys; and no person connected with the Post-Office Department shall disclose to any person other than the depositor the amount of any deposits, unless directed so to do by the Collector of Revenues.

Section 9. That the final judgment, order, or decree of any court of competent jurisdiction adjudicating any right or interest in the credit of any sum deposited by any person with the postal savings depository, if the same shall not have been appealed from, and the time for appeal have expired, upon submission to the Collector of Revenues of a copy of the same, duly authenticated in the manner provided by the laws of the United States for the authentication of the records and judicial proceedings of the courts of any state or territory, or of any possession subject to the jurisdiction of the United States, when the same are proved or admitted within any other court within the United States, shall be accepted by the Board of Trustees as conclusive of the title, right, interest, or possession so adjudicated; and any payment of said sum in accordance with such order, judgment, or decree shall operate as a full and complete discharge of the United States and the Canal Zone Government from the claim or demand of any person or persons to the same.

Section 10. This Order shall take effect and be in force sixty days from and after this date.

WM. H. TAFT.

The White House,
September 8, 1911.

[PUBLIC—No. 355—72D CONGRESS]

[H. R. 7514]

AN ACT.

In relation to the Canal Zone postal service.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the postal service of the Canal Zone shall be governed by such of the laws, rules, and regulations of the

Postal Service of the United States as are not inapplicable to the conditions existing in the Canal Zone, and the Governor of the Panama Canal is authorized to establish new post offices or discontinue those already established, to provide such rules and regulations as are necessary for the operation of the service, to appoint the personnel thereof, and to prescribe the postage stamps and other stamped paper which shall be used in such service: *Provided, however,* That the expenses of operating the Canal Zone postal service shall be defrayed, so far as possible, from the revenue derived therefrom, the use of which for that purpose is hereby authorized.

Sec. 2. That deposit money orders issued in the Canal Zone in lieu of postal savings certificates in accordance with rules and regulations heretofore established by the President, or that may hereafter be established by him, shall bear interest at a rate not exceeding 3 per centum per annum.

Sec. 3. That the interest received from the Canal Zone money-order funds deposited in banks under Canal Zone regulations shall be available to pay the interest on deposit money orders authorized by the preceding section. Such interest, which shall form a part of the postal revenues, shall also be available to pay the losses which are chargeable to the Canal Zone postal service.

Sec. 4. That all other laws for the operation of the Canal Zone postal service, excepting section 43a of the Penal Code of the Canal Zone, are hereby repealed.

Approved, February 16, 1933.

HOUSE OF REPRESENTATIVES

72d Congress, 1st Session. Report No. 526.

CANAL ZONE POSTAL SERVICE

February 17, 1932.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Lea, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H. R. 7514]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 7514) in relation to the Canal Zone postal service, having considered the same, report thereon with a recommendation that it pass.

The bill has the approval of the President and the Secretary of War, as will appear by the following letter:

War Department,

Washington, January 28, 1932.

Hon. Sam Rayburn,

Chairman Committee on Interstate and Foreign Commerce, House of Representatives.

Dear Mr. Rayburn: The receipt is acknowledged of a letter from the Hon. Clarence F. Lea, dated January 15, 1932, inclosing, and requesting on behalf of your committee a report upon, certain bills for the revision of the laws of the Canal Zone introduced by him, including bill H. R. 7514, entitled "A bill in relation to the Canal Zone postal service."

This is one of the proposals made for the revision of the laws of the Canal Zone recommended by me in letter to the President dated June 5, 1930, and in conformity with the provisions of the act of May 17, 1928 (45 Stat. 596), entitled "An act to revise and codify the laws of the Canal Zone," forwarded by him to the Congress with his message of June 9, 1930. The message and report submitted therewith

were printed as House Document No. 460, Seventy-first Congress, second session. The reasons for recommending the enactment of this bill are given on page 317 of that document.

Various orders and provisions of law relating to the Canal Zone postal system, together with the applicable parts of existing law compared with the proposed amendments and additions, are contained in House Report 2831, Seventy-first Congress, third session, to accompany H. R. 14062.

The early consideration and passage of the legislation proposed for the Canal Zone are recommended,

Sincerely yours,

PATRICK J. HURLEY,
Secretary of War.

During the Seventy-first Congress this matter was referred to the Postmaster General, whose approval was given in the following letter:

Post Office Department,
Washington, D. C., December 13, 1930.

Hon. James S. Parker,

Chairman Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D. C.

My dear Mr. Parker: The receipt is acknowledged of your letter of December 3, submitting for report a copy of H. R. 14082, a bill which would make the laws, rules, and regulations of the United States Postal Service applicable, so far as local conditions permit, to the postal service of the Canal Zone.

There is, of course, no objection to the bill on the part of the Post Office Department, but it seems to me that if there is to be any legislation on this subject at the present time it would be well for the committee to consider the feasibility of the consolidation of the Canal Zone Postal Service with the United States Postal Service. As you know, the Federal Postal Service now extends to Porto Rico, Hawaii, and Alaska, and I am aware of no reason why it should not be similarly extended to the Canal Zone.

Yours very truly,

WALTER F. BROWN.

A general statement relating to the revision and codification of the laws of the Canal Zone is made in the report on H. R. 7519, where the text of the law authorizing such work is quoted. This bill is part of the general revision.

On June 24, 1904, President Taft issued an Executive order establishing a postal service in the Canal Zone, which is as follows:

War Department,

Washington, June 24, 1904.

To the Chairman of the Isthmian Canal Commission:

Sir: The necessities of the inhabitants and the due administration of the affairs of government in the Canal Zone at Panama require the establishment of post offices and postal service in that territory.

It is therefore ordered: That a post office be established in each of the following-named towns of the Canal Zone, to wit: Cristobal, Gatun, Bohio, Gorgona, Bas Obispo, Empire, Culebra, La Boca, and Ancon.

The post offices at Cristobal and Ancon shall be money-order offices.

The Governor of the Canal Zone is hereby authorized to appoint postmasters for the post offices herein established and fix the compensation therefor, subject to the approval of the Isthmian Canal Commission.

The Governor of the Canal Zone is directed to formulate a plan for a practical and efficient postal service in said Canal Zone, and including such measures and provisions of the postal service of the United States as are not inapplicable to the conditions of law and fact existing in the Canal Zone, and to report said plan to the chairman of the Isthmian Canal Commission for such action as the discretion of the commission shall approve.

Pending the establishment of the postal service by act of the commission or other competent authority, the Governor of the Canal Zone is hereby authorized to establish post offices at such additional places in the Canal Zone as in his judgment the interests of the public require, and to appoint postmasters therefor and fix their compensation, subject to the approval or other action thereon by the Isthmian Canal Commission.

The Governor of the Canal Zone is also authorized to adopt and enforce such temporary rules, regulations, provisions, and requirements as may be necessary to secure a practical and efficient postal service in said Canal Zone; and to employ such temporary assistants and employees as the exigencies of the service require.

By direction of the President:

WM. H. TAFT, *Secretary of War.*

Act No. 8 of the Isthmian Canal Commission enacted the second day of September, 1904, provided in detail for the Postal Service on the Canal Zone, and section 42 of that act pertaining to the Postal Service is as follows:

Sec. 42. By Executive order date June 24, 1904, provision was made as follows:

"That a post office be established in each of the following-named towns of the Canal Zone, to wit: Cristobal, Gatun, Bohio, Gorgona, Bas Obispo, Empire, Culebra, La Boca, and Ancon. The post offices at Cristobal and Ancon shall be money-order offices."

The post office at Bas Obispo is discontinued, and post offices are hereby established at San Pablo and Matachin.

There is hereby created and established a postal service for the Canal Zone, Isthmus of Panama.

It shall be the duty of the Postal Service to administer the affairs of the post offices and the postal affairs of the zone.

The Postal Service of the Canal Zone shall be conducted, regulated, and controlled by such of the laws, rules, and regulations of the Postal Service of the United States as are not inapplicable to the conditions of law and fact existing in the Canal Zone, and the laws enacted and the rules and regulations adopted by the Isthmian Canal Commission.

The postmasters of the Canal Zone shall be appointed by the governor, and shall give bond for the faithful performance of the duties of their office in such sum and with such surety or sureties as shall be approved by the governor.

The governor of the zone is hereby authorized to establish new post offices or discontinue those already established at such places and at such times as, in his judgment, the public service requires.

The annual salaries of the postmasters, payable monthly, shall be as follows: San Pablo, ninety dollars; Gatun, ninety dollars; La Boca, one hundred and twenty dollars; Culebra, one hundred and twenty dollars; Empire, one hundred and twenty dollars; Matachin, one hundred and twenty dollars; Bohio, one hundred and twenty dollars; Gorgona, ninety dollars; Cristobal, twelve hundred dollars, and Ancon, nine hundred dollars.

Sec. 43. There is hereby created and established the office of director of posts of the Canal Zone, Isthmus of Panama. The director of posts is charged with direct conduct and control of the affairs of the Postal Service, inspection of post offices, and accounts of postmasters, the approval of requisitions for supplies for post offices and postmasters and the distribution of such supplies.

Postage stamps for the payment of postage in the Canal Zone shall be the postage stamps of the United States, surcharged with the words "Canal Zone, Panama." Requisitions for said stamps shall be drawn by the director of posts, approved by the governor of the zone and delivered to the treasurer of the zone, who shall forward the same to the treasurer of the Isthmian Canal Commission; the stamps, when received, shall be deposited with the treasurer of the Canal Zone for distribution to the postmasters of the zone, who shall make requisition therefor as required by the necessities of their offices and forward such requisitions to the director of posts for his approval, and upon approval by him, the treasurer of the zone is authorized to honor the same.

Sec. 44. All moneys collected or received by the director of posts by virtue of his office shall be deposited forthwith with the treasurer of the Canal Zone, and a receipt in duplicate therefor issued by the treasurer to the director of posts, shall attach the original thereof to his monthly account.

Between the first and fifth day of each calendar month the director of posts shall forward his accounts and the accounts of the Postal Service to the auditor of the Canal Zone for audit.

On September 8, 1911, the President put into effect by Executive order a Postal Savings System on the Canal Zone; that Executive order was repealed by subsequent Executive order bearing date of September 5, 1914, and

provision was made for the deposit of savings in post offices in the Canal Zone and the issuance of money orders therefore for which no fees should be charged. The order of September 5, 1914, was as follows:

To repeal the Executive order of September 8, 1911, establishing the Postal Savings System in the Canal Zone:

By virtue of the authority vested in me, I hereby establish the following order for the Canal Zone:

Section 1. The Executive order of September 8, 1911, establishing the Postal Savings System in the Canal Zone, is hereby repealed: Provided, That accounts opened in accordance with that order, and the regulations established thereunder shall continue as prescribed in said order and regulations until they are finally closed by the withdrawal of the deposits.

Sec. 2. For the accommodation of persons desiring to deposit their savings in the post offices of the Canal Zone, money orders may be issued in the Canal Zone payable to the purchaser at the office of issue, for which no fee shall be charged.

Sec. 3. This order shall take effect from and after October 1, 1914.

WOODROW WILSON.

The White House, September 5, 1914.

By the act of Congress approved August 21, 1916, it was provided that interest should be paid on deposit money orders issued by the Canal Zone post offices at a rate not to exceed 2 per cent per annum.

Sections 5, 6 and 7 of that act are as follows:

That any person who commits any act or who carries on any business, trade, or occupation in the Canal Zone without complying with the rules and regulations established by the President for the levying, assessing, and collecting of taxes, or who violates any rules or regulations for the use of the public roads and highways, or who violates any rules and regulations touching the licensing, taxes, operation, and use of self-propelled vehicles, or who violates any of the police regulations authorized hereunder, shall be punished by fine not to exceed $25 or by imprisonment in jail not to exceed thirty days, or by both such fine and imprisonment, in the court's discretion.

Sec. 6. That deposit money orders issued in the Canal Zone in lieu of postal savings certificates, in accordance with the rules and regulations heretofore established by the President, or that may hereafter be established by him, shall bear interest at a rate not exceeding 2 per centum per annum.

Sec. 7. That the interest received from the Canal Zone money-order funds deposited in banks under Canal Zone regulations shall be available to pay the interest on deposit money orders authorized by the preceding section. Such interest shall also be available to pay any losses which are chargeable to the Canal Zone postal service.

By the act of September 21, 1922, Congress raised the rate of interest to be paid on such deposit money orders from 2 to 3 per cent. Section 6 of that act is as follows:

Sec. 6. That deposit money orders issued in the Canal Zone in lieu of postal savings certificates in accordance with the rules and regulations heretofore established by the President, or that may hereafter be established by him, shall bear interest at a rate not exceeding 3 per centum per annum.

This bill (H. R. 7514) repeals all existing laws of the Canal Zone with reference to the Postal Service and provides new legislation upon that subject. The act retains only so much of the existing law as is considered necessary for the maintenance and operation of the Postal Service under the existing policy. This new act makes the revenues derived from the deposit money order funds a part of the general postal revenues and provides that the expenses of operating the Canal Zone Postal Service shall be defrayed, so far as possible, from the revenues derived therefrom. During the last five years, since the discontinuance of use of the Panama postage stamps, for which a 40 per cent subsidy was paid under the provisions of an agreement entered into by President Taft with the Republic of Panama, the Canal Zone Postal Service has been operating without a deficit, excepting one year when there was a slight loss. The administrative authorities of the zone feel that it is highly desirable to make the Postal Service in the zone self-supporting as far as is possible, so that it will not be necessary to come to Congress for an appropriation to cover deficits in postal operations.

The first paragraph of the bill makes no new provisions with respect to the personnel of the service or the use of postage stamps. It merely continues the present methods which have been in effect for many years.

The applicable parts of existing law, with the parts added and omitted indicated by brackets and italics, as provided in the bill, are inserted herewith and are as follows:

[Matter stricken out and inclosed in brackets and new matter in italic]

That the postal service of the Canal Zone shall be [conducted, regulated, and controlled] *governed* by such of the laws, rules, and regulations of the Postal Service of the United States as are not inapplicable to the conditions [of law and fact] existing in the Canal Zone [and the laws enacted and the rules and regulations adopted by the Isthmian Canal Commission.], *and* the Governor of the [Zone] *Panama Canal* is [hereby] authorized to establish new post offices, or discontinue those already established, [at such places and at such times as, in his judgment, the public service requires,] *to provide such rules and regulations as are necessary for the operation of the service,* [The postmasters of the Canal Zone shall be appointed by the Governor] *to appoint the personnel thereof,* [Postage stamps for the payment of postage in the Canal Zone shall be the postage stamps of the United States, surcharged with the words, "Canal Zone—Panama."] *and to prescribe the postage stamps and other stamped paper which* shall be used *in such service: Provided, however, That the expenses of operating the Canal Zone postal service shall be defrayed, so far as possible, from the revenues derived therefrom, the use of which for that purpose is hereby authorized.*

Sec. 2. That deposit money orders issued in the Canal Zone in lieu of postal savings certificates in accordance with [the] rules and regulations heretofore established by the President or that may hereafter be established by him shall bear interest at a rate not exceeding 3 per centum per annum.

Sec. 3. That the interest received from the Canal Zone money-order funds deposited in banks under Canal Zone regulations shall be available to pay the interest on deposit money orders authorized by the preceding section. Such

interest *which shall form a part of the postal revenues* shall also be available to pay [any] *the* losses which are chargeable to the Canal Zone postal service.

Sec. 4. That all other laws for the operation of the Canal Zone postal service excepting Section 43a of the Penal Code of the Canal Zone are hereby repealed.

(Note.—Section 43a referred to as contained in H. R. 7519 reads as follows:)

"Sec. 43a. The Postal Laws and Regulations of the United States not locally inapplicable which define crimes against the Postal Service and prescribe punishments therefor are hereby extended to the Canal Zone and shall be enforceable in the courts of the Canal Zone in the manner and form prescribed for other criminal cases by the Canal Zone laws."

CERTIFICATE OF TAX-SALE

United States of America,
District of Virginia:

Tax-Sale Certificate

Whereas John Hawxhurst, Gillett T. Watson, and William I. Boreman having been, by virtue of an Act of Congress approved June 7, 1862, entitled "An Act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes" by the President, by and with the advice and consent of the Senate, duly appointed tax commissioners, and thereby constituted a board of three tax commissioners for the insurrectionary districts of the State of Virginia, to wit, so much of the State as was by President of the United States, by his proclamation of July 1, 1862, proclaimed to be in insurrection, and the civil authority of the government of the United States so obstructed that the act of congress approved August 5, 1861, named in the act aforementioned, could not be peaceably executed, said William I. Boreman having resigned, and the President, by and with the advice and consent of the Senate, having, on the 28th day of January, A. D. 1864, appointed A. Lawrence Foster in his stead, the undersigned, composing the board of tax commissioners as now constituted, do hereby certify that the commissioners did, in compliance with the acts of congress aforesaid, on the 15th day of September, 1863, fix the sum of $92.07 as the amount of the tax, by virtue of said Act of August 5th, 1861,

due and payable to the United States, charged upon the following described lot or parcel of land situated in the County of Alexandria, in the said State, to wit: Arlington, on Georgetown road, Northwest from the courthouse nine miles, lately occupied by Robert E. Lee, and bounded as follows: On the north by the land of Ross; east by the Potomac River; south by the land of James Roach, Johnson, and Guy Henry; west by the land of Elliott, Columbus Alexander, and John Tucker, containing eleven hundred acres, be the same more or less, said to have belonged to Mary R. Lee, and charged to her on the land book of the State aforesaid for the year 1860, and valued in said book for $34,100; said sum of $92.07 bearing the same direct proportion to the whole amount of direct tax, namely, $937,550.66 2/3, apportioned to said State by the Act of Congress of August 5, 1861, as the value of said parcel of land was estimated to bear to the whole valuation of the real estate in said State of Virginia subject to said direct tax, according to the last assessment and valuation of said real estate, and the several parcels thereof, made under authority of the said State previous to the first day of January, A. D. 1861, to wit, the assessment and valuation for the year 1860, whereby, in addition to said tax charged upon said parcel of land, a sum of fifty percentum of said tax became charged thereon; and that no owner or owners of said lot or parcel of land did, within sixty days after the commissioners did, on the aforesaid 15th day of September, 1863, so fix said amount, pay the tax thus charged upon the said lot or parcel of land into the Treasury of the United States, or to the commissioners holding said office during said term, or to any such commissioners at any time, by reason of which non-payment said price or parcel of land *became forfeited to the United States;* and, accordingly, the said commissioners caused the same to be advertised for sale, describing in said advertisement the aforesaid parcel of land, and distinctly stating therein said amount of $92.07 as the amount of direct tax assessed on said tract or parcel, in a newspaper published in said County of Alexandria, where said land is situate, namely, in the newspaper called the Virginia State Journal, published in the City of Alexandria, in said County, for four weeks previous to the day of sale; and did further advertise as above by posting notice of said sale in three public places in said County four weeks previous to said day of sale, which day of sale was advertised by said publication and said posting to take place on the

eleventh day of January, A. D. 1864, and thereafter on the said day last named so advertised, and at the place of sale so advertised, to wit, in said City and County of Alexandria, said commissioners did cause the same to be *offered for sale* to the highest bidder who would bid a sum not less than the tax and penalty aforesaid, with lawful costs, and ten per cent per annum interest on said tax then accrued; and no person bidding the same, or a larger sum than the sum hereinafter named, and said tract, lot, and parcel of land having been selected under the direction of the President, in pursuance of an order, of which the following is a copy:

"Whereas, by the Act of 1862, Chapter 98, entitled 'An Act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes,' it was enacted that certain land in said insurrectionary districts should be charged with taxes, and that said land should be sold for nonpayment thereof, as therein provided, and whereas, by the Act of 1863, Chapter 21, approved February 6, said Act of 1862 was amended; and whereas, by virtue of the power in said Acts conferred, 'at any such sale any tracts, parcels, or lots of land which might be selected under the direction of the President for government use, for war, military, naval, revenue, charitable, educational, or police purposes, might at *said sale be bid in* (by the commissioners appointed under the Act), under direction of the President, for and struck off to the United States;'

"And whereas the President, with the advice and consent of the Senate, has, in pursuance of law, appointed John Hawxhurst, William I. Boreman, and G. F. Watson as tax commissioners within and for the State of Virginia; and whereas the real estate hereinafter described, has become charged with taxes to the United States, and by reason of the non-payment thereof, and of the penalty lawfully assessed thereon, *is forfeited to the United States,* and has become liable to be sold under the provisions of the Act aforesaid; and whereas the said estate has been *advertised to be sold for nonpayment of said taxes* and penalties on the 11th day of January, 1864, according to law; and whereas the President of the United States, by virtue of the authority vested in him as aforesaid, has selected for government use, for war, military, charitable, and educational purposes, the land hereinafter described:

"Now, therefore, I, Abraham Lincoln, President of the United States, have ordered and directed, and hereby order and direct, said commissioners *to bid* in and *have struck off to the United States* the following described tract of land, for purposes aforesaid, and in pursuance of the statutes on that behalf provided, namely, the Arlington estate, lately occupied by Robert E. Lee, bounded as follows: North by the land of Ross; east by the Potomac River; south by the land of James Roach, Johnson, and Guy Henry; west by the land of Elliott, Columbus Alexander, and John Tucker; containing eleven hundred acres, be the same more or less."

"ABRAHAM LINCOLN"
"President of the United States".

"Executive Mansion,
Washington, 6th Jan. 1864."

for government use, for war, military, charitable, and educational purposes, *said commissioners did bid in the same to the United States* for the sum of $26,800, being not less than the taxes, penalty and costs, and ten percentum per annum interest on said taxes.

In testimony whereof said commissioners have hereunto affixed their signatures on this 25th day of September, A. D. 1866.

JNO. HAWXHURST
GILLET F. WATSON
A. LAWRENCE FOSTER
U. S. Direct Tax Commissioners of Virginia.

State of Virginia,
Alexandria County, to wit:

Personally appeared before me, a justice of the peace for the State and County aforesaid, John Hawxhurst, Gillet F. Watson, and A. Lawrence Foster, parties signing the above paper, and they severally acknowledged the same to be their act and deed.

Given under my hand this 7th day of March, 1867.

ROBERT BELL, J. P.

Virginia:

Alex. Co. Court Clerk's Office, March 7, 1867.

The foregoing certificate of sale, with the acknowledgment, was this day admitted to record.

Teste: JEFFERSON TACEY, *Clerk.*

WHITE HOUSE,
Washington, D. C., May 9, 1904.

SIR:

* * * * * * * * *

Inasmuch as it is impracticable for the President, with his other public duties, to give to the work of supervising the Commission's construction of the Canal and government of the zone the personal attention which seems proper and necessary, and inasmuch as the War Department is the department which has always supervised the construction of the great civil works for improving the rivers and harbors of the country and the extended military works of public defense, and as the said department has from time to time been charged with the supervision of the government of all the island possessions of the United States, and continues to supervise the government of the Philippine Islands, I direct that all the work of the Commission done by virtue of powers vested in me by the act of Congress approved June 28, 1902, in the digging, construction, and completion of the Canal, and all the governmental power in and over said canal zone and its appurtenant territory, which by virtue of the act of Congress approved April 28, 1904, and these instructions, shall be vested in said Isthmian Canal Commission, shall be carried on or exercised under your supervision and direction as Secretary of War.

Subject to the limitations of law and the conditions herein contained, the Isthmian Canal Commission are authorized and directed:

1. To make all needful rules and regulations for the government of the zone and for the correct administration of the military, civil, and judicial affairs of its possessions until the close of the Fifty-eighth Congress.

2. To establish a civil service for the government of the strip and construction of the Canal, appointments to which shall be secured as nearly as practicable by a merit system.

* * * * * * * * *

6. To make all needful rules and regulations respecting an economical and correct disbursement and an accounting for all funds that may be appropriated by Congress for the construction of the canal, its auxiliary works, and the government of the canal zone; and also to establish a proper and comprehensive system of bookkeeping, showing the state of the work, the expenditures by classes, and the amounts still available.

* * * * * * * * *

The commission may legislate on all rightful subjects of legislation not inconsistent with the laws and treaties of the United States so far as they apply to said zone and other places, and the said power shall include the enactment of the sanitary ordinances of a preventive or curative character to be enforced in the cities of Colon and Panama and which are contemplated and authorized by Article 7 of said Canal Convention. Such legislative power shall also include the power to raise and appropriate revenues in said zone; and all taxes, judicial fines, customs duties, and other revenues levied and collected in said zone by or under the authority of said commission shall be retained, accounted for, and disbursed by said commission for its proper purposes. The members of said commission to the number of four or more shall constitute a legislative quorum, and all rules and regulations passed and enacted by said commission shall have set forth as a caption that they are enacted by the Isthmian Canal Commission "By authority of the President of the United States."

* * * * * * * * *

All laws, rules, and regulations of a governmental character enacted by the commission hereunder shall be submitted to you for your approval, and should your approval be withheld from any such law, rule, or regulation, then from that time the law, rule, or regulation shall thereafter have no force or effect.

* * * * * * * * *

The necessary expenses incurred by the commission in carrying on the government of the canal zone will be defrayed from the local revenues so far as the said revenues may be sufficient and the remainder will be met from the appropriation made by the fifth section of the act of Congress approved June 28, 1902. An estimate of the proposed expenditures and revenues for each year in carrying on the government of the zone will be submitted to Congress at the beginning of each annual session.

* * * * * * * * *

These instructions may be modified and supplemented as occasion shall arise.

Very respectfully,

THEODORE ROOSEVELT.

Hon. WILLIAM H. TAFT,
Secretary of War.